

EXHIBIT A

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY

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 MICHAEL SIMONS, : CIVIL ACTION
5 Plaintiff, :
 :
6 v. :
 :
7 BOSTON SCIENTIFIC :
 CORPORATION, GARY :
8 LICKOVITCH, SAMUEL CONAWAY :
 AND JOHN DOES 1-30, : NO.
9 Defendants. : 2:15-cv-07519-MCA-LDW
 - - -

10 April 27, 2016
11

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12 CONFIDENTIAL - SUBJECT TO FURTHER CONFIDENTIALITY REVIEW
13 Videotaped deposition of MICHAEL J.
14 SIMONS taken pursuant to notice, was held at the law
15 offices of Morgan, Lewis & Bockius LLP, 502 Carnegie
16 Center Drive, Suite 301, Princeton, New Jersey,
17 beginning at 9:18 a.m., on the above date, before
18 Ann Marie Mitchell, a Federally Approved Certified
19 Realtime Reporter, Registered Diplomate Reporter,
20 Certified Court Reporter and Notary Public for the
21 State of New Jersey.

22 - - -
23

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<p style="text-align: right;">Page 22</p> <p>1 A. Not that I can recall, not 2 specifically in prep. 3 Q. I want to ask some more background 4 questions. 5 Have you been a party to any law -- 6 go ahead. 7 A. Can I step back? 8 Yes. I've spoken to my current 9 fiancée about the case. 10 Q. What's her name? 11 A. Anna Knighten. 12 Q. Are you back together with her? 13 A. I am. 14 Q. Okay. And are -- you said she's a 15 fiancée? 16 A. Yes. We spoke about she was called 17 by a lawyer from Boston Scientific to ask if she was 18 interested in testifying. 19 Q. Okay. And are you scheduled to be 20 married to her? 21 A. I am. 22 Q. When is your wedding date? 23 A. We have it scheduled for July 6th of 24 this year. 25 Q. Okay. And where does she live?</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Is that Lacia Simons? 2 A. Yes. 3 Q. Okay. Anything else? 4 A. And there was a court case years ago, 5 I forget the exact date, that because of a phone 6 call from my ex-wife, I was brought up on charges of 7 child endangerment. 8 Q. Anything else? 9 A. And finally, I had a DUI. 10 Q. Any other litigation that you've been 11 involved with? 12 A. Not that I can recall. 13 Q. Have you ever sued anyone before? 14 A. No. 15 Q. Have you been a witness, a testifying 16 witness, so giving testimony in court or in a 17 situation like this, where you've given testimony 18 under oath in any proceeding? 19 A. We began doing it in the restraining 20 order case and stopped and settled that. 21 Q. So tell me about the restraining 22 order case. Right now you just referred to it as 23 one case. Earlier you said there were several 24 restraining orders, so -- 25 A. Yeah. So this is over the course of</p>
<p style="text-align: right;">Page 23</p> <p>1 A. She lives in Memphis, Tennessee. Or 2 I'm sorry, Olive Branch, Mississippi is the exact 3 town, right outside of Memphis. 4 Q. Is your plan that you'll move down to 5 Mississippi or that she'll move to New Jersey after 6 you get married? 7 A. Plan is that I have a job that I 8 travel quite a bit, so I'm going to keep residence 9 in both places because I have children in New 10 Jersey, and so kind of split my time. 11 Q. All right. So other than this 12 lawsuit, have you been a named party in any 13 litigation? 14 A. Could you clarify litigation? 15 Q. Yeah. Any legal matter in which -- 16 that is in front of a court. 17 A. Yes. 18 Q. What other litigation have you been 19 involved in? 20 A. So I've been divorced. 21 Q. Okay. 22 A. And that was January of 2013. 23 Q. Okay. Anything else? 24 A. I've had several -- I think two 25 restraining orders put against me by my ex-wife.</p>	<p style="text-align: right;">Page 25</p> <p>1 three-and-a-half years. 2 Q. Okay. 3 A. The restraining order, as I 4 understand it, is common practice from her divorce 5 attorney. In each case, the restraining order was 6 dropped in exchange for a change of some consent 7 order or financial situation. 8 Q. And was the basis for seeking the 9 restraining order each occasion the same thing, or 10 were there different events that led to -- 11 A. Verbal confrontations, no physical. 12 Q. Were you accused of physical abuse by 13 Lacia ever? 14 A. No, no. I was accused of a threat to 15 her. 16 Q. Okay. What was the alleged threat? 17 A. She had tape recorded me -- for one 18 of the cases she had tape recorded me with an 19 argument in the driveway of my home when she was 20 threatening to take my children on my night, and I 21 had made a comment to her which she recorded on her 22 iPhone. 23 Q. What was the comment? 24 A. The comment was, if you're attempting 25 to take my children, I'm going to attempt to take</p>

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<p style="text-align: right;">Page 26</p> <p>1 them from you as well.</p> <p>2 Q. That's it?</p> <p>3 A. Yeah. I'm going to -- but it was</p> <p>4 worded in the fact of if you attempt to take my</p> <p>5 children, you won't have them as well.</p> <p>6 Subsequently, she did not think it was a threat for</p> <p>7 several days and then filed a restraining order.</p> <p>8 Q. And just to be clear, Lacia Simons</p> <p>9 has never accused you of physical abuse?</p> <p>10 A. She has not accused me.</p> <p>11 Q. Have you ever filed for bankruptcy?</p> <p>12 A. No.</p> <p>13 Q. And other than this -- just to</p> <p>14 finalize the earlier line of questioning, other than</p> <p>15 your testimony here today and your testimony in the</p> <p>16 restraining order proceeding or proceedings, have</p> <p>17 you testified as a witness in any other case?</p> <p>18 A. No.</p> <p>19 Q. You graduated from Gettysburg College</p> <p>20 in 1993. Correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Have you had any further education</p> <p>23 after that?</p> <p>24 A. No.</p> <p>25 Q. I want to just go through your</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. And was there any period of</p> <p>2 unemployment between InPhoto Surveillance and</p> <p>3 Pfizer?</p> <p>4 A. There was an overlap -- yes. I</p> <p>5 was -- I went from one job to the other.</p> <p>6 Q. You left your job at InPhoto so that</p> <p>7 you could start at Pfizer, is that --</p> <p>8 A. That's correct.</p> <p>9 Q. And you worked at Pfizer for two</p> <p>10 years or a year-and-a-half?</p> <p>11 A. No. I worked at Pfizer for a little</p> <p>12 longer than that.</p> <p>13 Q. Okay.</p> <p>14 A. Because I didn't start with Boston</p> <p>15 Scientific till 2000.</p> <p>16 Q. So approximately September of '96</p> <p>17 through February of 2000?</p> <p>18 A. Till March 2000. To my recollection</p> <p>19 that's when training started.</p> <p>20 Q. And what did you do at Pfizer?</p> <p>21 A. I had several different jobs. I was</p> <p>22 a sales rep, and then I was an institutional</p> <p>23 hospital rep.</p> <p>24 Q. Okay.</p> <p>25 A. So I was promoted once.</p>
<p style="text-align: right;">Page 27</p> <p>1 employment history prior to coming to Boston</p> <p>2 Scientific.</p> <p>3 My understanding is your first job</p> <p>4 out of college was with InPhoto Surveillance; is</p> <p>5 that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And you worked there from June of '93</p> <p>8 till approximately September of 1996?</p> <p>9 A. Yes. Approximately two-and-a-half.</p> <p>10 Q. Okay. And what did you do for them?</p> <p>11 A. I was a sales rep.</p> <p>12 Q. And what does InPhoto Surveillance</p> <p>13 do?</p> <p>14 A. InPhoto Surveillance is a</p> <p>15 surveillance company that rents investigators to</p> <p>16 investigate insurance fraud and workmen's</p> <p>17 compensation.</p> <p>18 Q. Where were you -- where did you work</p> <p>19 for InPhoto Surveillance?</p> <p>20 A. I had the state of New York as a</p> <p>21 territory.</p> <p>22 Q. And after that you took a job with</p> <p>23 Pfizer; is that right?</p> <p>24 A. Pfizer Pharmaceuticals. That's</p> <p>25 correct.</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. And why did you leave your employment</p> <p>2 at Pfizer?</p> <p>3 A. Because an offer was made to me by</p> <p>4 Boston Scientific.</p> <p>5 Q. So you voluntarily left your</p> <p>6 employment at both InPhoto and Pfizer; is that</p> <p>7 correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And on each occasion you voluntarily</p> <p>10 left to accept other employment?</p> <p>11 A. That's correct.</p> <p>12 Q. And to accept better employment?</p> <p>13 A. In my opinion, yes.</p> <p>14 Q. Was each move an increase in salary</p> <p>15 for you?</p> <p>16 A. It was. I'm sorry. That's not</p> <p>17 correct.</p> <p>18 Q. Okay.</p> <p>19 A. Pfizer was a decrease in salary. The</p> <p>20 reason I took the job is I saw Pfizer as more as a</p> <p>21 career than a small company like InPhoto</p> <p>22 Surveillance.</p> <p>23 Q. Okay.</p> <p>24 A. So initially a decrease but</p> <p>25 eventually worked into an increase.</p>

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<p style="text-align: right;">Page 30</p> <p>1 Q. Got it. Did you receive corrective 2 counseling or employment discipline at either Pfizer 3 or InPhoto Surveillance? 4 A. Never. 5 Q. Anybody ever raise complaints about 6 you at either of those places of employment? 7 A. Never. 8 Q. Did you ever raise concerns or 9 complaints at either of those places of employment? 10 A. Never. 11 Q. Did you have any other jobs before 12 going to Boston Scientific and after you graduated 13 from Gettysburg other than InPhoto and Pfizer? 14 A. No, sir. 15 Q. All right. What's your current 16 address? 17 A. 34 Wanamaker Avenue. 18 Q. City? 19 A. I'm sorry, Waldwick, New Jersey 20 07463. 21 Q. And you live alone there? 22 A. My children are there half the time. 23 Q. Okay. And so your children are 24 children -- two daughters that you had with Lacia 25 Simons?</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Since summer of '14. I'm sorry, 2 summer of '15. 3 MR. MARTIN: '15. 4 THE WITNESS: Yeah, after the DUI. 5 It was a short period of time where I saw them at 6 games and practices and supervised to appease my 7 wife and make her more comfortable. 8 BY MR. KNAPP: 9 Q. Got it. And with respect to -- so I 10 just want to go through your marital history then. 11 Lacia you said you divorced in 2013, 12 January 2013? 13 A. Yes. 14 Q. And when did you get married to her? 15 A. April of 2005. 16 Q. All right. And then prior to Lacia, 17 you were married to a woman by the name of Barbara 18 Simons? 19 A. That's correct. 20 Q. Okay. And what are the dates of your 21 marriage, wedding? When did you get married to her? 22 A. It was December. I'm not exactly 23 sure of the year. I was married for five years, I 24 believe. Probably December of '98 maybe. 25 Q. And when did you separate or divorce</p>
<p style="text-align: right;">Page 31</p> <p>1 A. That's correct. 2 Q. And they're Calie and Keira? 3 A. That's correct. 4 Q. How old are they? 5 A. 10 and 7. 6 Q. Who is what age? 7 A. Calie is 10, C-A-L-I-E. And Keira, 8 K-E-I-R-A, is 7. 8 tomorrow. 9 Q. And you resumed visitation rights 10 with them? 11 A. That's correct. 12 Q. Okay. You lost them after your DUI 13 for a period of time. Correct? 14 A. No. 15 Q. No? Okay. 16 A. I -- that was my wife's decision, not 17 any court decision. 18 Q. Okay. 19 A. She was reluctant to give them to me 20 and I was reluctant to press the issue until I 21 proved to her that, you know, I was on the path to 22 recovery. 23 Q. And when did you get to the point -- 24 how long have you had visitation rights with them 25 voluntarily?</p>	<p style="text-align: right;">Page 33</p> <p>1 Barbara? 2 A. I don't recall the exact month, but 3 the marriage was about five years. 4 Q. Was it -- presumably it was before 5 April 2005. Right? 6 A. Yes, yes. It was several -- it was 7 probably two years before that. 8 Q. Okay. We're now approximately 9 sometime in 2003? 10 A. 2003, something like that. '98 to 11 2003 sounds correct. 12 Q. And then you mentioned you're 13 currently engaged to Anna Knighten. 14 Did she previously work at Boston 15 Scientific? 16 A. She did. 17 Q. Is that how you met or -- 18 A. Yes. 19 Q. What was her role? 20 A. She was a sales rep for Boston 21 Scientific. At first she was -- held the title of 22 interventional sales specialist and then eventually 23 moved to become a peripheral sales representative. 24 Q. And she's not at Boston Scientific 25 any longer. Correct?</p>

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<p style="text-align: right;">Page 34</p> <p>1 A. She is not.</p> <p>2 Q. Where does she work now?</p> <p>3 A. She works for a company called EKOS</p> <p>4 Corporation, E-K-O-S.</p> <p>5 Q. When did she cease her employment</p> <p>6 with Boston Scientific?</p> <p>7 A. She initially ceased her employment</p> <p>8 with Boston Scientific when she moved from Memphis</p> <p>9 to New Jersey several years ago, I guess sometime in</p> <p>10 '13, May of '13.</p> <p>11 Q. Okay. And --</p> <p>12 A. And then she was terminated from</p> <p>13 Boston Scientific or let go in a reduction in force</p> <p>14 for Boston Scientific. She had gotten another job</p> <p>15 with Bayer Corporation, and Boston Scientific had</p> <p>16 bought Bayer and then they did a reduction in force</p> <p>17 and she was reduced in December of 2014.</p> <p>18 Q. So I just want to make sure I'm</p> <p>19 understanding this right.</p> <p>20 She moved from Memphis to New Jersey</p> <p>21 I assume to be with you. Correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And at that time she quit her</p> <p>24 employment with Boston Scientific?</p> <p>25 A. Yes. She resigned.</p>	<p style="text-align: right;">Page 36</p> <p>1 when you're a new hire.</p> <p>2 Q. And when was that?</p> <p>3 A. I would be guessing if I told you.</p> <p>4 It was probably eight years prior to her moving up</p> <p>5 to me.</p> <p>6 Q. Okay.</p> <p>7 A. But I don't know the exact date.</p> <p>8 Q. And then I take it you'd see her at</p> <p>9 sales meetings and other events or --</p> <p>10 A. We were friendly, to say hello at</p> <p>11 sales meetings, yeah.</p> <p>12 Q. Yeah. Okay. All right. I want to</p> <p>13 turn to your employment since leaving Boston</p> <p>14 Scientific in April 2015.</p> <p>15 Your last day of work at Boston</p> <p>16 Scientific was April 20, 2015; is that right?</p> <p>17 A. That sounds correct.</p> <p>18 Q. How many jobs have you had since</p> <p>19 then?</p> <p>20 A. One.</p> <p>21 Q. And who or what is the name of your</p> <p>22 employer?</p> <p>23 A. Control Medical.</p> <p>24 Q. Okay. You started working for them</p> <p>25 when?</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Okay. But then she resumed</p> <p>2 employment with Boston Scientific?</p> <p>3 A. She initially took a job with a</p> <p>4 company called CSI.</p> <p>5 Q. Okay.</p> <p>6 A. And found that job to be not</p> <p>7 something she was interested in doing, so she</p> <p>8 resigned from there and then found employment with</p> <p>9 Bayer Corporation.</p> <p>10 Q. I get it. Okay.</p> <p>11 A. And then from there, Bayer and Boston</p> <p>12 Scientific decided they needed to do a reduction in</p> <p>13 force.</p> <p>14 Q. Got it.</p> <p>15 A. So she was caught up in that.</p> <p>16 Q. Okay. I understand. And how did you</p> <p>17 two meet then?</p> <p>18 A. We initially met because when I was a</p> <p>19 sales rep at Boston Scientific, she came to New York</p> <p>20 as a field trainee to work with me.</p> <p>21 Q. So she was a field trainee for your</p> <p>22 region?</p> <p>23 A. No. She was in the Memphis region</p> <p>24 and trained -- and I was a field trainer, so she</p> <p>25 worked with me for a week. That's common practice</p>	<p style="text-align: right;">Page 37</p> <p>1 A. Mid October.</p> <p>2 Q. October '15?</p> <p>3 A. Yes. I think that's the date they</p> <p>4 have for me starting.</p> <p>5 Q. 2015. Right?</p> <p>6 A. Correct.</p> <p>7 Q. And what's your job with Control</p> <p>8 Medical?</p> <p>9 A. I'm the regional director of sales</p> <p>10 for the Northeast.</p> <p>11 Q. And is that the job that you were</p> <p>12 hired into, or have you been --</p> <p>13 A. No. That's the job I was hired into.</p> <p>14 Q. And what does Control Medical sell?</p> <p>15 A. So Control Medical has several</p> <p>16 products. They sell a thrombectomy device for</p> <p>17 peripherals and coronaries. They sell a</p> <p>18 micropuncture kit currently. And in the near future</p> <p>19 they'll be launching several new products, which I'm</p> <p>20 not exactly familiar with right now, but they're</p> <p>21 in -- they're in trials to get them to market.</p> <p>22 Q. Do they compete with Boston</p> <p>23 Scientific at all?</p> <p>24 A. No. I think thrombectomy, Boston</p> <p>25 Scientific had it and they acquired it after they</p>

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<p style="text-align: right;">Page 50</p> <p>1 knowledge.</p> <p>2 Q. All right. Let's move on then.</p> <p>3 You are an alcoholic. Correct?</p> <p>4 A. I am.</p> <p>5 Q. Okay. And how many times have you</p> <p>6 received treatment?</p> <p>7 A. So over the course of my life, two --</p> <p>8 three times.</p> <p>9 Q. I'm aware of the treatment you</p> <p>10 received in March/April 2015 time frame.</p> <p>11 When else have you received</p> <p>12 treatment?</p> <p>13 A. So after my court case for</p> <p>14 endangering the welfare of a child, I went to an</p> <p>15 outpatient center called High Focus.</p> <p>16 Q. High Focus?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. When was that?</p> <p>19 A. Again, I struggle with the exact</p> <p>20 dates, but I believe it was March through June time</p> <p>21 frame, probably three years prior, so probably '12.</p> <p>22 Q. Okay.</p> <p>23 A. '11 or '12, I'm not exactly positive.</p> <p>24 Q. Okay.</p> <p>25 A. And then in an attempt to save my</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Any other reason you left Hazelden?</p> <p>2 A. I didn't believe I was an alcoholic</p> <p>3 at that point.</p> <p>4 Q. You say at that point. I take it now</p> <p>5 looking back you acknowledge you were an alcoholic</p> <p>6 at that point?</p> <p>7 A. Could you explain that question to me</p> <p>8 better? I mean, clearly I didn't acknowledge I was</p> <p>9 an alcoholic at that point. There's -- there's a</p> <p>10 bunch of debate about when alcoholism starts,</p> <p>11 whether at birth or whether you work yourself into</p> <p>12 that through drinking, so I can't tell you if I</p> <p>13 believe I was an alcoholic then or not.</p> <p>14 Q. At what point do you believe you</p> <p>15 became an alcoholic?</p> <p>16 A. A very difficult question. I think</p> <p>17 my drinking escalated post my divorce. And I</p> <p>18 believe in my heart that I became an alcoholic when</p> <p>19 I began to get consequences from alcohol.</p> <p>20 Q. When did the consequences start?</p> <p>21 A. I would say the consequences started</p> <p>22 right before entering rehab were the biggest</p> <p>23 consequences that I experienced from alcohol.</p> <p>24 Q. And were there consequences prior to</p> <p>25 that?</p>
<p style="text-align: right;">Page 51</p> <p>1 marriage, I went to Hazelden for ten days and</p> <p>2 realized it wasn't for me, in Minnesota. And</p> <p>3 basically -- basically with my ex-wife saying if you</p> <p>4 don't go, we're done.</p> <p>5 Q. And that was Lacia?</p> <p>6 A. Yes.</p> <p>7 Q. And when was that treatment?</p> <p>8 A. I would say that was actually a year</p> <p>9 prior to that, '11 or --</p> <p>10 Q. So about 2011, '12?</p> <p>11 A. Yeah.</p> <p>12 Q. Or 2010 or '11?</p> <p>13 A. Yeah.</p> <p>14 Q. And when you say ten days in you</p> <p>15 realized it wasn't for you, what do you mean by</p> <p>16 that?</p> <p>17 A. Well, the reason I left is because I</p> <p>18 found out my insurance would not cover inpatient</p> <p>19 rehab, my Boston Scientific insurance, until I had</p> <p>20 completed an outpatient. And so I chose not to pay</p> <p>21 35 plus thousand dollars to continue treatment that</p> <p>22 insurance would not cover.</p> <p>23 Q. But you did then immediately go to</p> <p>24 outpatient. Right?</p> <p>25 A. I did not go to outpatient.</p>	<p style="text-align: right;">Page 53</p> <p>1 A. It depends on whose viewpoint you're</p> <p>2 looking at, whether you're talking to my ex-wife and</p> <p>3 thinking that I, you know, was drinking with</p> <p>4 children. But no, no significant consequences as</p> <p>5 far as loss of job or -- not in my opinion.</p> <p>6 Q. How about corrective counseling,</p> <p>7 final written warning, that sort of thing?</p> <p>8 A. Yeah. I did receive two of those.</p> <p>9 Q. Were those -- are those consequences</p> <p>10 of drinking in your mind?</p> <p>11 A. I did not -- they are consequences of</p> <p>12 drinking. I did not completely agree with</p> <p>13 everything in either of those.</p> <p>14 Q. When did the drinking start affecting</p> <p>15 your work?</p> <p>16 A. It's hard to put a pinpoint date on</p> <p>17 it. I'm not sure it ever affected my ability to do</p> <p>18 the job or to do the job very well.</p> <p>19 Q. Is that your testimony today?</p> <p>20 A. It's my belief that I was still</p> <p>21 performing at a high level.</p> <p>22 Q. It didn't have any impact on your</p> <p>23 job?</p> <p>24 A. I'm not saying it didn't have any</p> <p>25 impact. My testimony is that I believe I was still</p>

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<p style="text-align: right;">Page 54</p> <p>1 a competent manager and still extremely successful 2 in the goals that were set forward for me by Boston 3 Scientific as far as achieving quota and making 4 sales. 5 Q. When did it start impacting your job? 6 A. I would say when Sam Conaway gave me 7 a corrective action, that in that instance, 8 obviously in the minds of my superiors had an issue 9 with it. 10 Q. What prompted you to seek treatment 11 in March of 2015? 12 A. I had just reached the end of my rope 13 with drinking and I had hit my bottom and I was 14 ready to get help finally. 15 Q. And how long was that treatment? 16 That was inpatient treatment. Right? 17 A. Inpatient for 30 days. 18 Q. And where was that? 19 A. California. 20 Q. And what was the name of the center? 21 A. Sound Landings, Solid Landings. 22 Q. Did your drinking impact your life, 23 so I'm expanding it beyond work, prior to March 24 2015? Did it have adverse consequences in your 25 life?</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Did you engage in four-day binges 2 where you'd drink two bottles of liquor a day for 3 four days? 4 A. No. 5 Q. Did you ever report engaging in binge 6 drinking for four days at a time? 7 A. That I can recall, I did not. 8 Q. Did your drinking change your 9 behavior at all? 10 A. Yes. 11 Q. How so? 12 A. I was not as happy a person. I think 13 it caused some extreme or -- moods, either good or 14 bad. And I was much quicker to arguments. 15 Q. Temper? 16 A. Yes. 17 Q. Did it cause you to have slurred 18 speech? 19 A. Not that I knew of, but I've heard it 20 has, yes. 21 Q. You don't dispute that it caused you 22 to have slurred speech? 23 A. As I just said, I didn't hear it from 24 myself, but other people have told me that I had. 25 Q. Do you deny it?</p>
<p style="text-align: right;">Page 55</p> <p>1 A. It did. 2 Q. How so? 3 A. Strained relationship with family and 4 loved ones. Over the course of years, it affected 5 my visitation with my children. 6 Q. Any other way? 7 A. You know, it depends on how you look 8 at it. I had a negative relationship with my 9 ex-wife, Lacia. 10 Q. Did -- so your divorce became final 11 with Lacia in January 2014; is that correct? 12 A. Correct. 13 Q. I think you said earlier that kind of 14 caused you to increase your drinking; is that right? 15 A. It gave me the opportunity to drink 16 more and more freely. 17 Q. And you did. Correct? 18 A. Yes. 19 Q. And do you recall part of what 20 started was you started binge drinking? 21 A. I started drinking, yes, more at a 22 time than before. 23 Q. Do you recall reporting to others 24 that you engaged in binge drinking? 25 A. No.</p>	<p style="text-align: right;">Page 57</p> <p>1 A. I think I just answered the question 2 that I don't deny that other people have told me I 3 had. 4 Q. Do you deny that you had slurred 5 speech? 6 A. I don't know if I had slurred speech. 7 Q. Did it cause you to fail -- failure 8 to recall things? 9 A. Yes. 10 Q. Did it make it difficult to 11 concentrate? 12 A. At times. 13 Q. Did it make you less focused? 14 A. Yes, I believe so, at times. 15 Q. Did it create -- did you ever have 16 blackouts where you couldn't remember things? 17 A. No. Infrequently. 18 Q. How frequent? 19 A. There would be vast amount of times 20 that I was fine, not blackouts. 21 Q. Excuse me. I interrupted you. 22 When you did have blackouts, what 23 happened? 24 A. I had no negative consequences that I 25 can recall from a blackout.</p>

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<p style="text-align: right;">Page 58</p> <p>1 Q. How many times do you think you had a 2 blackout in the last -- in 2014 and 2015? 3 A. I don't recall ever having a 4 blackout. I recall not remembering small things 5 that had happened during the course of an evening, 6 but never a full blackout where patches of time were 7 gone. 8 Q. Do you recall the incidence when you 9 were at a restaurant with Anna Knighten and you had 10 called the police because you thought somebody had 11 stolen your car? 12 A. I don't recall that. 13 Q. And the police gave you a ride home 14 and your car was in your driveway? 15 A. I don't recall that. 16 Q. Okay. Do you deny that happened? 17 A. I don't recall that. I don't know if 18 it happened. 19 Q. Okay. Is it possible? 20 MR. MARTIN: He just answered the 21 question. Possibility is not an appropriate 22 question. 23 BY MR. KNAPP: 24 Q. Is it possible that happened? 25 MR. MARTIN: If you don't recall, you</p>	<p style="text-align: right;">Page 60</p> <p>1 complete. 2 Q. Your testimony is you only drink at 3 night? 4 A. No. 5 MR. MARTIN: That's not what he said. 6 BY MR. KNAPP: 7 Q. Okay. Did you ever drink during the 8 workday? 9 A. I've drank during traditional work 10 hours, yes. 11 Q. Okay. Did you ever drink during your 12 employment at Boston Scientific? 13 A. Yes. 14 Q. Did drinking affect your judgment? 15 A. Yes. 16 Q. Did it cause you to say or do things 17 that you probably wouldn't have done if you hadn't 18 been drinking? 19 A. Yes. 20 Q. Did you consume illegal drugs while 21 you were drinking? 22 A. No. 23 Q. Did you ever consume illegal drugs 24 like cocaine at any work meetings or sales meetings? 25 A. No.</p>
<p style="text-align: right;">Page 59</p> <p>1 answer the question. 2 THE WITNESS: I don't recall. 3 BY MR. KNAPP: 4 Q. Is it possible, whether you recall or 5 not? 6 MR. MARTIN: Anything is possible. 7 THE WITNESS: Anything is possible. 8 BY MR. KNAPP: 9 Q. So it is? 10 A. Yes. 11 Q. Did you become more physically 12 confrontational as a result of your drinking? 13 A. No. 14 Q. Did you become more lethargic or did 15 you -- about things? 16 A. At times. 17 Q. What was your -- did you just -- you 18 know, in the final months of your alcoholism before 19 you sought treatment in March 2015, how often a week 20 would you drink? 21 A. I would venture to say it varied, but 22 probably five days, five nights a week. 23 Q. And when would you start drinking on 24 any given day? 25 A. Usually after the workday was</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. Have you drunk -- have you consumed 2 alcohol at all since being released from the 3 treatment facility in California in April 2015? 4 A. I have. It has not been a perfect 5 journey. 6 Q. Tell me about that. 7 A. It's been on a rare occasion a couple 8 of times for short periods of time, which I quickly 9 caught myself and reentered the AA program. 10 Q. And when were those -- are those -- 11 do you refer to those as relapses? 12 A. I do. 13 Q. Okay. And when did those relapses 14 occur? 15 A. To my recollection, I don't have 16 specific dates, but summertime and then maybe into 17 the fall. It was when -- before I started with 18 Control Medical. 19 Q. Okay. When you say summer and fall, 20 you're referring to the summer and fall of 2015? 21 A. That's correct. 22 Q. Did you lie about your drinking to 23 others? 24 A. Yes. 25 Q. Did you lie about your drinking to</p>

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<p style="text-align: right;">Page 62</p> <p>1 others at Boston Scientific?</p> <p>2 A. Not that I can recall.</p> <p>3 Q. Did your drinking cause you to miss</p> <p>4 work meetings?</p> <p>5 A. No.</p> <p>6 Q. Did it cause you to be late for work</p> <p>7 meetings?</p> <p>8 A. No.</p> <p>9 Q. Did it cause you to be absent from</p> <p>10 work meetings or work events?</p> <p>11 A. No.</p> <p>12 Q. Never?</p> <p>13 A. No.</p> <p>14 Q. Did it cause others to ask you not to</p> <p>15 participate in meetings or work events?</p> <p>16 A. No.</p> <p>17 Q. Never?</p> <p>18 A. No. Not that I can recall.</p> <p>19 Q. Do you recall a work visit at</p> <p>20 Columbia Presbyterian with Peter Dunn?</p> <p>21 A. I had many work visits with Pete Dunn</p> <p>22 at Columbia Presbyterian.</p> <p>23 Q. Do you recall a meeting with a</p> <p>24 cardiologist whose patient had died with a Boston</p> <p>25 Scientific device inside of him, and the</p>	<p style="text-align: right;">Page 64</p> <p>1 you'd remember, if a subordinate of yours said, I</p> <p>2 don't want you to come into this meeting with this</p> <p>3 cardiologist who just had a patient who died with a</p> <p>4 device inside of him because I think you're drunk?</p> <p>5 A. I don't think that was ever said to</p> <p>6 me that I recall.</p> <p>7 Q. You think you'd remember that if it</p> <p>8 was?</p> <p>9 A. I think I will.</p> <p>10 Q. Do you recall any of your employees</p> <p>11 ever asking you if you'd been drinking?</p> <p>12 A. No.</p> <p>13 Q. Do you recall telling any of your</p> <p>14 subordinate employees that you had alcoholism?</p> <p>15 A. I did.</p> <p>16 Q. Who did you tell that you had</p> <p>17 alcoholism?</p> <p>18 A. I don't think I put it as alcoholism,</p> <p>19 to my recollection. I think I put it to a drinking</p> <p>20 problem.</p> <p>21 Q. Who did you tell that you had a</p> <p>22 drinking problem?</p> <p>23 A. I had spoken to several of my</p> <p>24 subordinates.</p> <p>25 Q. Who?</p>
<p style="text-align: right;">Page 63</p> <p>1 cardiologist asked you to come meet with him after</p> <p>2 that death?</p> <p>3 A. I don't recall that.</p> <p>4 Q. Do you recall Pete Dunn waiting with</p> <p>5 you in the hallway outside of this physician's</p> <p>6 office and telling you, you're drunk, go home?</p> <p>7 A. No.</p> <p>8 Q. You don't recall anything like that</p> <p>9 at all?</p> <p>10 A. No.</p> <p>11 Q. Is it possible that happened?</p> <p>12 A. No.</p> <p>13 Q. Would Pete --</p> <p>14 A. I don't believe so.</p> <p>15 Q. Would Pete Dunn be lying if he said</p> <p>16 that?</p> <p>17 A. I don't think Pete Dunn lies.</p> <p>18 Q. Okay. So if he said that, it would</p> <p>19 be true?</p> <p>20 A. I believe he believes it to be true.</p> <p>21 Q. Do you recall leaving and not going</p> <p>22 into that meeting?</p> <p>23 A. I don't know what meeting you're</p> <p>24 talking about, so I can't say either way.</p> <p>25 Q. Do you think that would be something</p>	<p style="text-align: right;">Page 65</p> <p>1 A. Joe Peabody, Pete Dunn, Tom Garrett,</p> <p>2 Michele Polk. And I believe that the other members</p> <p>3 of my team, I just said that I was going away on</p> <p>4 leave. I remembered telling Sam Conaway as well</p> <p>5 before I left for treatment that I was going away on</p> <p>6 leave.</p> <p>7 Q. So to the extent you had discussions</p> <p>8 with Joe Peabody, Pete Dunn, Tom Garrett and Michele</p> <p>9 Polk that you had a drinking problem, was that all</p> <p>10 in one meeting where you told all of them at the</p> <p>11 same time, or did you have separate conversations</p> <p>12 with them?</p> <p>13 A. Phone conversations individually.</p> <p>14 Q. Individualized?</p> <p>15 A. Yeah. I also told Camille Chang</p> <p>16 Gilmore, the head of HR, that I've identified that I</p> <p>17 have the disease of alcoholism.</p> <p>18 Q. And to the extent you told Joe, Pete,</p> <p>19 Tom and Michele that you had a drinking problem, was</p> <p>20 this in March 2015 or prior to that?</p> <p>21 A. I believe I had discussions with Joe</p> <p>22 Peabody prior to that, feeling as if, you know,</p> <p>23 because of my divorce, I was drinking more than I</p> <p>24 should, but I didn't classify it as a drinking</p> <p>25 problem. But the others, I believe it was toward</p>

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<p style="text-align: right;">Page 70</p> <p>1 Q. Did you tell anybody at Boston 2 Scientific that you had been arrested? 3 A. I had spoken to Anna Knighten. 4 Q. Your girlfriend? 5 A. Yes. 6 Q. Okay. Anybody else? 7 A. I believe she spoke with a Chris 8 Hodge. And I believe when I got out, I had spoken 9 to Tom Garrett and Joe Peabody. 10 Q. So Tom and Joe are subordinates. 11 Right? 12 A. Yes. 13 Q. And Tom already knew about it because 14 he came to your house and you weren't there and 15 called the police and they said you were in jail. 16 Right? 17 A. I think he went to the police station 18 and had a discussion with them, and they said they 19 weren't allowed to disclose where I was, but I was 20 in a safe place. 21 Q. Who is Chris -- was it Hodges? 22 A. Chris Hodge, H-O-D-G-E. He's a 23 friend that works at Boston Scientific, not a 24 subordinate. 25 Q. Did you ever tell any of your</p>	<p style="text-align: right;">Page 72</p> <p>1 days that you were in jail? 2 A. I did not take vacation. 3 Q. Your supervisors assumed you were 4 working those two days. Right? 5 A. So there's an assumption at Boston 6 Scientific that people work flexible hours. And 7 every single manager or sales leader that I've had 8 understands that we as sales reps don't work 9:00 to 9 5:00 jobs, so you take time when you need time. But 10 it's clear that we have an exorbitant amount of 11 hours that we work, so they're okay with working on 12 a flexible schedule. 13 Q. Did you ever fire any of your 14 subordinates? 15 A. I have. 16 Q. How many? 17 A. So I let go of -- I just want to get 18 this accurate. 19 I let go of at least one, and I'm not 20 positive -- no. I let go of two, and I'm not 21 positive if the third one resigned before we let him 22 go, but we certainly had him on an action plan. 23 Q. Who -- what are the names of the two 24 or three folks that you fired? 25 A. To my recollection, and I'm sorry if</p>
<p style="text-align: right;">Page 71</p> <p>1 supervisors that I wasn't working Monday and Tuesday 2 because I was in jail? 3 A. No. 4 Q. Okay. Anything like that? 5 A. No. 6 Q. Why not? 7 A. I didn't feel that it would reflect 8 positively on me in the work space. 9 Q. Did you think you could be fired for 10 that? 11 A. I would doubt I would have been with 12 explaining the reasoning behind it. No, I don't 13 think it would be warranted to fire someone for -- 14 for that. 15 Q. Because you thought it was all 16 unjustified. Right? 17 A. Because I thought it was, yeah, 18 overpolicing and overboard. 19 Q. Right. 20 A. Yes. 21 Q. You didn't want to take the risk of 22 what might happen and let them know? 23 A. I didn't see that it would benefit me 24 in any way and reflect positively. 25 Q. Did you take vacation for those two</p>	<p style="text-align: right;">Page 73</p> <p>1 I'm missing one, but Jack Condon. 2 Q. Okay. 3 A. Andrew McNelly and Chris Beck. 4 Q. How about Kevin Slovak? 5 A. Kevin Slovak, yes. 6 Q. You fired him too? 7 A. I forgot about that. We had to let 8 Kevin go, yes. 9 Q. Okay. Why did you fire Kevin? 10 A. I had heard reports that he was 11 ineffective in the field and causing more issues 12 than he was helping the sales process. 13 Q. Is there any incident that caused you 14 to make that decision? 15 A. There were several incidents that 16 were reported to me where customers felt he was 17 inappropriate in their labs. 18 Q. How so? 19 A. Not knowing specific protocol, 20 meaning breaking a sterile field during a procedure, 21 not focused on the job as far as talking to other 22 reps and being bothersome to techs and nurses while 23 procedures were going on. And frankly, I didn't 24 feel that he put the effort in to learning the 25 product lines in as much detail as he should have.</p>

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<p style="text-align: right;">Page 74</p> <p>1 Q. Why was Chris Beck let go?</p> <p>2 A. Chris Beck was let go because he was</p> <p>3 ineffective at the role.</p> <p>4 Q. Was there an incident that kind of</p> <p>5 was the straw that broke the camel's back with him?</p> <p>6 A. No specific incident. He just didn't</p> <p>7 show competency in simple tasks that we asked of our</p> <p>8 sales representatives as far as inventory, sales,</p> <p>9 customer relationships.</p> <p>10 Q. How about Andrew McNelly?</p> <p>11 A. Similar to Chris Beck. He just</p> <p>12 showed inconsistent in the competencies we look for</p> <p>13 in a sales representative.</p> <p>14 Q. No particular event that led to his</p> <p>15 discharge?</p> <p>16 A. Not that I recall a specific event.</p> <p>17 It was a buildup of incompetence.</p> <p>18 Q. How about Jack Condon?</p> <p>19 A. Jack Condon, he had customer reports</p> <p>20 against him, and he had been banned from several</p> <p>21 hospital systems because of aggressive behavior in</p> <p>22 sales.</p> <p>23 Q. Do you recall, did you have regularly</p> <p>24 scheduled Monday calls with your boss?</p> <p>25 A. Gary Lickovitch?</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Three?</p> <p>2 A. I think that would be accurate. In</p> <p>3 that range. It wasn't often.</p> <p>4 Q. Do you recall specific incidences?</p> <p>5 A. No.</p> <p>6 - - -</p> <p>7 (Deposition Exhibit No. Simons-1,</p> <p>8 Biopsychosocial Intake Assessment, Bates</p> <p>9 stamped SOLID LANDING_000005 through SOLID</p> <p>10 LANDING_000014, was marked for</p> <p>11 identification.)</p> <p>12 - - -</p> <p>13 BY MR. KNAPP:</p> <p>14 Q. Mr. Simons, I'm showing you what's</p> <p>15 been marked as Exhibit 1. This is an intake</p> <p>16 assessment that we received from your provider of</p> <p>17 inpatient treatment in March and April of 2015. So</p> <p>18 I'm going to ask you some questions with respect to</p> <p>19 what's in here.</p> <p>20 You'll see the assessment date is</p> <p>21 March 14, 2015 up on the top of the first page.</p> <p>22 Do you see that?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Is that the date that you commenced</p> <p>25 your treatment?</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Before Gary.</p> <p>2 A. Paul Reilly?</p> <p>3 Q. Yeah.</p> <p>4 A. I can't tell you if it was Monday.</p> <p>5 We had regular calls with him, though.</p> <p>6 Q. Who was your director back when you</p> <p>7 were incarcerated?</p> <p>8 A. Paul Reilly.</p> <p>9 Q. Do you recall that at that time you</p> <p>10 had regularly scheduled Monday calls with Mr. Ryan?</p> <p>11 A. Mr. Reilly?</p> <p>12 Q. Reilly, excuse me.</p> <p>13 A. As I said, I don't recall if they</p> <p>14 were on Monday, but we had regular scheduled calls.</p> <p>15 Q. Did your drinking cause you to be so</p> <p>16 drunk at dinners with clients that you had</p> <p>17 difficulty communicating?</p> <p>18 A. No.</p> <p>19 Q. Do you recall being intoxicated on</p> <p>20 the phone during the workday when your subordinates</p> <p>21 called you?</p> <p>22 A. I believe that's happened rarely.</p> <p>23 Q. How many times do you think it's</p> <p>24 happened?</p> <p>25 A. Several.</p>	<p style="text-align: right;">Page 77</p> <p>1 A. I believe I went out the 13th.</p> <p>2 Q. Okay. Do you recall having an intake</p> <p>3 meeting?</p> <p>4 A. I did.</p> <p>5 Q. Where you provided information, they</p> <p>6 asked questions and you answered them?</p> <p>7 A. I did, yeah.</p> <p>8 Q. If you look down towards the bottom,</p> <p>9 there's a question, "What are the reasons for</p> <p>10 seeking treatment now?"</p> <p>11 Do you see that?</p> <p>12 A. Uh-huh.</p> <p>13 MR. KNAPP: Okay. And I should note</p> <p>14 that this document, this exhibit, is confidential,</p> <p>15 subject to the protective order. And we'll say the</p> <p>16 testimony relating to it should also be such.</p> <p>17 MR. MARTIN: Thank you. We agree to</p> <p>18 that.</p> <p>19 BY MR. KNAPP:</p> <p>20 Q. It says, "Patient says he has been</p> <p>21 drinking for 'a very' long 'time,' starting in</p> <p>22 high school."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. "Over the years, patient says</p>

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<p style="text-align: right;">Page 86</p> <p>1 Q. I'm not sure.</p> <p>2 It says, "Patient meets medical</p> <p>3 necessity for Alcohol Dependence at the Detox level</p> <p>4 of care. Patient's symptoms result in significant</p> <p>5 impairments in functioning, as evidenced by</p> <p>6 plaintiff's deteriorating occupational functioning,</p> <p>7 deteriorating social functioning, and deteriorating</p> <p>8 interpersonal relationships."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you agree with that, that at that</p> <p>12 point there were significant impairments in your</p> <p>13 functioning?</p> <p>14 A. I agree with that certain areas of my</p> <p>15 life were suffering because of drinking.</p> <p>16 Q. And how was the drinking</p> <p>17 significantly impacting your occupational or work</p> <p>18 functioning?</p> <p>19 A. I -- well, clearly the perception of</p> <p>20 me had changed with Sam Conaway and then</p> <p>21 subsequently Gary Lickovitch. So my ability to --</p> <p>22 for them to consider me effective I think had</p> <p>23 been -- had been changed, their perception of me.</p> <p>24 Q. You keep talking about people's</p> <p>25 perception of you and their view of you as opposed</p>	<p style="text-align: right;">Page 88</p> <p>1 - - -</p> <p>2 BY MR. KNAPP:</p> <p>3 Q. Showing you what's been marked as</p> <p>4 Exhibit 2, Mr. Simons, this is notes of Solid</p> <p>5 Landings from a group session on April 1, 2015.</p> <p>6 And if you read the paragraph that's</p> <p>7 labeled "Individual Assessment/Intervention," do you</p> <p>8 see that?</p> <p>9 A. Yes.</p> <p>10 Okay.</p> <p>11 Q. This has you saying in quotes, "I</p> <p>12 still distrust certain men because I see them as</p> <p>13 competition in the workplace and for the chicks."</p> <p>14 Is it possible you said that?</p> <p>15 A. It's possible.</p> <p>16 Q. Okay. What did you mean by that?</p> <p>17 A. Well, first, if you understand the</p> <p>18 atmosphere, it was five men and there was somewhat</p> <p>19 of a camaraderie and joking atmosphere in there</p> <p>20 where you were trying to get a laugh from people.</p> <p>21 But I had the feeling throughout the time that I</p> <p>22 spent with Sam Conaway that he was threatened by my</p> <p>23 presence because it took away from attention that he</p> <p>24 got.</p> <p>25 Q. Okay. This says you "distrust</p>
<p style="text-align: right;">Page 87</p> <p>1 to what you were doing. And my question was, how</p> <p>2 did it impact your job functioning.</p> <p>3 And is it your testimony that the</p> <p>4 only way it impacted your job functioning is because</p> <p>5 other people had issues with you?</p> <p>6 A. No, no. I believe maybe I became</p> <p>7 less patient with people. I believe that even when</p> <p>8 I wasn't under the influence of alcohol, that you</p> <p>9 still have negative effects as far as patience</p> <p>10 level, tolerance of things. I believe it changes</p> <p>11 when you're an active alcoholic. I believe it has</p> <p>12 the possibility to change some of your personality</p> <p>13 traits.</p> <p>14 Q. Got it. Do you recall reporting in</p> <p>15 your treatment session that you "distrust certain</p> <p>16 men because I see them as competition in the</p> <p>17 workplace and for...chicks"?</p> <p>18 MR. MARTIN: Just answer the</p> <p>19 question, do you recall.</p> <p>20 THE WITNESS: No.</p> <p>21 - - -</p> <p>22 (Deposition Exhibit No. Simons-2,</p> <p>23 Group Sessions, Wednesday, April 1, 2015,</p> <p>24 Bates stamped SOLID LANDING_000293, was</p> <p>25 marked for identification.)</p>	<p style="text-align: right;">Page 89</p> <p>1 certain men because I see them as competition in the</p> <p>2 workplace."</p> <p>3 Did you?</p> <p>4 A. I don't think that's accurate. I</p> <p>5 think probably as I sit here today what I would mean</p> <p>6 is that I distrust certain men in charge of my</p> <p>7 career, because they see us as competition.</p> <p>8 Q. So it's them that's feeling</p> <p>9 competitive, not you?</p> <p>10 A. Oh, I think we both are competitive.</p> <p>11 And that's the nature of the business that we're in.</p> <p>12 Q. Did you find Gary Lickovitch -- did</p> <p>13 you feel competitive with him? Did you see him as a</p> <p>14 competitive threat?</p> <p>15 A. No, I didn't.</p> <p>16 Q. How about Sam Conaway?</p> <p>17 A. I think Sam viewed me possibly as a</p> <p>18 competitive threat.</p> <p>19 Q. How about you?</p> <p>20 A. I did not see Sam as a competitive</p> <p>21 threat, no.</p> <p>22 Q. Is there anybody else in the</p> <p>23 workplace that you would have -- any men in the</p> <p>24 Boston Scientific workplace that you saw as</p> <p>25 competition?</p>

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<p>1 Q. Have you ever received -- been</p> <p>2 arrested or received tickets for road rage</p> <p>3 incidents?</p> <p>4 A. No.</p> <p>5 Q. Have you ever engaged in road rage?</p> <p>6 A. It depends on your definition of road</p> <p>7 rage.</p> <p>8 Q. Okay.</p> <p>9 A. But yeah, have I ever been angry that</p> <p>10 someone cut me off or -- yeah, of course.</p> <p>11 Q. Okay. Do you recall any incidents</p> <p>12 when you actually physically hit cars?</p> <p>13 A. No.</p> <p>14 Q. Do you recall the first time that you</p> <p>15 and Gary Lickovitch rode together on a sales call</p> <p>16 when he started supervising you, New York, and you</p> <p>17 got upset with a taxi driver and actually hit the</p> <p>18 vehicle?</p> <p>19 A. With my hand?</p> <p>20 Q. Yes.</p> <p>21 A. Yes, I recall that.</p> <p>22 Q. Okay.</p> <p>23 A. He was getting extremely close to my</p> <p>24 car, so I wanted to stop that and wake that up and</p> <p>25 say, hey, you're about to hit me.</p>	<p>1 11:14 a.m.)</p> <p>2 - - -</p> <p>3 (Deposition Exhibit No. Simons-4,</p> <p>4 Application for Employment, Bates stamped</p> <p>5 BSC00000006 through BSC00000015, was</p> <p>6 marked for identification.)</p> <p>7 - - -</p> <p>8 THE VIDEOGRAPHER: This begins Disk 2</p> <p>9 of the deposition. The time is 11:14 a.m. We are</p> <p>10 on the record.</p> <p>11 BY MR. KNAPP:</p> <p>12 Q. All right. Mr. Simons, I'd like to</p> <p>13 turn the questioning now to your employment at</p> <p>14 Boston Scientific.</p> <p>15 A. Okay.</p> <p>16 Q. You started working for Boston</p> <p>17 Scientific in February 2000. Right?</p> <p>18 A. February or March, yes. I believe</p> <p>19 February, though.</p> <p>20 Q. Showing you what's been marked as</p> <p>21 Exhibit 4. We're not going to spend a lot of time</p> <p>22 with this, but I just wanted you to confirm that</p> <p>23 this is your application for employment with Boston</p> <p>24 Scientific, which you signed in February of 2000,</p> <p>25 and the resume you submitted?</p>
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<p>1 Q. Okay.</p> <p>2 A. And he was close enough to reach my</p> <p>3 hand out the window of my vehicle and touch it, and</p> <p>4 that's what I did.</p> <p>5 Q. Okay. And what did you say?</p> <p>6 A. I don't recall, but I'm sure it</p> <p>7 wasn't...</p> <p>8 Q. Some F bombs here and there?</p> <p>9 A. Possibly.</p> <p>10 Q. Do you recall what Gary said to you</p> <p>11 after that incident?</p> <p>12 A. I don't.</p> <p>13 Q. Do you recall him saying, don't ever</p> <p>14 do that again?</p> <p>15 A. No.</p> <p>16 Q. Any other incidents like that where</p> <p>17 you hit cars?</p> <p>18 A. Not that I recall.</p> <p>19 MR. KNAPP: All right. Should we</p> <p>20 take a quick break?</p> <p>21 MR. MARTIN: Yeah. It's a good time.</p> <p>22 THE VIDEOGRAPHER: The time is 11:02</p> <p>23 a.m. We are off the record.</p> <p>24 - - -</p> <p>25 (A recess occurred from 11:02 a.m. to</p>	<p>1 A. Yes.</p> <p>2 Q. And when you were first hired at</p> <p>3 Boston Scientific, you were hired to be territory</p> <p>4 manager for Long Island and the West Peripheral</p> <p>5 Vascular Territories?</p> <p>6 A. That's correct.</p> <p>7 Q. And you reported to Tony Ratchford?</p> <p>8 A. Yes; for a short time.</p> <p>9 Q. He was -- okay. And Tony was the</p> <p>10 regional manager for New York?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And that's the job you</p> <p>13 ultimately ended up with?</p> <p>14 A. To start, yes.</p> <p>15 Q. And then you were promoted to manager</p> <p>16 in January of 2009; is that right?</p> <p>17 A. That's correct.</p> <p>18 Q. And so when you were promoted to</p> <p>19 manager, can you just describe what that job meant?</p> <p>20 What did it -- what were your job duties?</p> <p>21 A. So regional manager at Boston</p> <p>22 Scientific is responsible for the development of</p> <p>23 representatives as well as his region or her region</p> <p>24 attaining quota set by the company.</p> <p>25 Q. And how does the regional manager</p>

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<p>1 help reach quota?</p> <p>2 A. Many ways. You help representatives</p> <p>3 devise a clear-cut plan and then to execute that</p> <p>4 plan, as well as -- as well as assisting in</p> <p>5 contracts and ultimately increasing usage of the</p> <p>6 devices.</p> <p>7 Q. So -- and assisting with contracts</p> <p>8 meaning -- means, among other things, like closing a</p> <p>9 deal with a potential new customer?</p> <p>10 A. That's correct.</p> <p>11 Q. Or a existing customer for a new</p> <p>12 sale?</p> <p>13 A. Right. For more -- expanding your</p> <p>14 base of business within a hospital or hospital</p> <p>15 system.</p> <p>16 Q. And it also includes kind of</p> <p>17 maintaining the customer relationship. Right?</p> <p>18 A. Yes. You're responsible for strong</p> <p>19 customer relationships, especially with key opinion</p> <p>20 leaders.</p> <p>21 Q. Especially what?</p> <p>22 A. Key opinion leaders.</p> <p>23 Q. And what was -- as regional manager,</p> <p>24 what was the region that you manage?</p> <p>25 A. So New York and New Jersey it was</p>	<p>1 Long Island as well as some other accounts in New</p> <p>2 Jersey and Westchester and more upstate New York</p> <p>3 areas. I also had different representatives come</p> <p>4 onto our team from the other region.</p> <p>5 Q. So is it correct that during the</p> <p>6 entire time that you were a regional manager, you</p> <p>7 reported to a -- somebody in Gary Lickovitch's</p> <p>8 position?</p> <p>9 A. No.</p> <p>10 Q. Okay.</p> <p>11 A. That spot was vacant for an extended</p> <p>12 period of time. And then at some point during that</p> <p>13 time, Sam Conaway, amongst his other</p> <p>14 responsibilities, was tasked with assisting the</p> <p>15 regional managers in that role.</p> <p>16 Q. So let's talk -- what was Gary's job</p> <p>17 title?</p> <p>18 A. So his job titled changed from the</p> <p>19 director of the Northeast, without changing any</p> <p>20 responsibilities, to vice president, I think area</p> <p>21 vice president or regional vice president of the</p> <p>22 Northeast.</p> <p>23 Q. So when you were hired in 20 --</p> <p>24 excuse me, promoted to manager, regional manager, in</p> <p>25 2009, was there a director of the Northeast region?</p>
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<p>1 called.</p> <p>2 Q. Okay.</p> <p>3 A. So it was basically the five</p> <p>4 boroughs -- at the beginning of my employment, it</p> <p>5 was the five boroughs of New York and Northern New</p> <p>6 Jersey, Central to Northern New Jersey.</p> <p>7 Q. Did that region change from 2009 to</p> <p>8 2015?</p> <p>9 A. It did. Boston Scientific went</p> <p>10 through a reduction in force. So I believe then --</p> <p>11 my numbers may not be exactly accurate, but they had</p> <p>12 35 managers and they cut that down to 17 or 18</p> <p>13 managers. So with that reduction in force, I was</p> <p>14 given a larger geographic territory.</p> <p>15 Q. And when did that RIF or reduction in</p> <p>16 force occur?</p> <p>17 A. Again, I'm really bad with dates, but</p> <p>18 I believe it was probably two years prior, maybe a</p> <p>19 year-and-a-half prior to my end of employment.</p> <p>20 Q. So sometime in 2013 perhaps?</p> <p>21 A. That sounds like it probably is</p> <p>22 right.</p> <p>23 Q. So when your region was expanded, how</p> <p>24 was it expanded?</p> <p>25 A. So I picked-up geographic areas of</p>	<p>1 A. Yes. I was promoted by Paul Reilly.</p> <p>2 Q. And how long was Paul your direct</p> <p>3 supervisor?</p> <p>4 A. Paul was let go from the company as a</p> <p>5 restructuring. And again, I'm not exactly positive</p> <p>6 the date. And subsequently there was a director put</p> <p>7 in place named Guenter Haines.</p> <p>8 Q. Guenter?</p> <p>9 A. Yeah, G-U-E-N-T-E-R Haines. And he</p> <p>10 was subsequently removed from the position and given</p> <p>11 another role at Boston Scientific.</p> <p>12 Q. And then who replaced Guenter?</p> <p>13 A. So that's when the open time was.</p> <p>14 And then so we reported directly to Mark Toland, the</p> <p>15 senior VP of sales for a time. And then I believe</p> <p>16 Sam was tasked with assisting in the territory.</p> <p>17 Q. So the regional -- in your situation</p> <p>18 as a regional manager, you reported to the sales</p> <p>19 director for your region?</p> <p>20 A. That's correct.</p> <p>21 Q. The larger region?</p> <p>22 A. Yes.</p> <p>23 Q. And that was the Northeast region?</p> <p>24 A. Yes.</p> <p>25 Q. And then that person who either was</p>

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<p>1 called the director of Northeast or the area vice 2 president for the Northeast reported to the director 3 of sales? 4 A. The senior VP of sales, yes. 5 Q. And at the time of your separation, 6 that was Sam Conaway? 7 A. I'm sorry? 8 Q. At the time that you were fired, the 9 person in that role was Sam Conaway. Correct? 10 A. No. Gary Lickovitch was in my direct 11 supervisor role, and the senior VP of sales was Sam 12 Conaway. 13 Q. That's what I'm talking about. 14 A. Okay. 15 Q. So in 2009 when you were promoted, 16 who was in the senior VP of sales role? 17 A. Denis Harrington. 18 Q. Okay. Did you have other senior vice 19 presidents of sales that was your second level 20 supervisor other than Denis and Sam? 21 A. Not -- Mark Toland filled that 22 position between Denis and Sam. 23 Q. How do you spell Mark's last name? 24 A. T-O-L-A-N-D. 25 Q. So it was Denis, Mark and Sam?</p>	<p>1 once in the field for the day. 2 Q. And when was that? 3 A. I don't -- I don't recall the date 4 exactly, but it was during my tenure as a regional 5 manager. 6 Q. Got it. Sometime between 2009 and 7 2015? 8 A. Towards later, you know, '13, '14, 9 probably '14. I just can't recall the date he was 10 in the field with me. 11 Q. Did you ever have any significant 12 conversations with him the 10 to 20 times that you 13 would run into him at meetings? 14 A. We had conversations about customers 15 and business, if you consider that significant. 16 Q. So let's talk then going the other 17 direction and the team that you supervised. 18 In 2015, how many sales reps reported 19 to you? 20 A. So I believe I had five sales 21 representatives, six sales representatives. 22 Q. Why don't you name them. It looks 23 like you're doing it internally. 24 A. I'm doing it in my head. 25 So Ryan McKeefrey, Pete Dunn, Tom</p>
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<p>1 A. Yes. From when I was a regional 2 manager, yes. 3 Q. Right. Okay. All right. So 4 that's -- and then the senior VP of sales reports to 5 whom? 6 A. The president of the division. 7 Q. The division is the -- what division? 8 A. Interventional cardiology. 9 Q. And that person is Kevin Ballinger? 10 A. Currently. 11 Q. And Kevin was the president of the 12 international cardiology division in 2015 when you 13 were let go. Correct? 14 A. That's correct. 15 Q. How many times do you think you've 16 spoken to Kevin Ballinger? 17 A. I would say you can count them 18 probably 10 to 20 over the years, hello at meetings. 19 He was at several meetings that I was at. 20 Q. Were you personal friends with him? 21 A. No. He's ridden with me on sales 22 rides. 23 Q. And how many times has he ridden -- 24 did he ride with you in sales rides? 25 A. To my recollection, I rode with Kevin</p>	<p>1 Garrett, Joe Peabody, Michele Polk, Tim Martin, 2 Arial -- I can't recall her last name. She was a 3 clinical specialist. I believe that's it. 4 Q. So in your region in 2015, just one 5 clinical specialist? 6 A. Two. 7 Q. Who is -- 8 A. Arial and Tim Martin were both 9 clinical specialists. 10 Q. So in terms of sales reps, I have 11 Ryan, Pete, Tom, Joe and Michele? 12 A. So Pete and Tom in 2015 had the role 13 of business partner. And Joe Peabody, Michele Polk, 14 Ryan McKeefrey had the role of territory therapy 15 consultant. 16 Q. All right. How about Louis Del 17 Ponte? 18 A. I don't -- 19 Q. Was he a sales rep? Okay. 20 Thad Reardon? 21 A. I've heard the name Thad Reardon. He 22 didn't work for me. 23 Q. Okay. How about Jillian Rothwell? 24 A. Did I say Jillian Rothwell on there? 25 Q. No.</p>

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<p style="text-align: right;">Page 122</p> <p>1 performance -- I don't know even know exactly what 2 it stands for. You submit that to your manager or 3 direct reporting boss. Then he or she in turn fills 4 in their own PDC and evaluates you from their 5 perspective. 6 Q. So part of it is your own -- if it's 7 your evaluation, part of it's your evaluation of 8 yourself, part of it is your manager's evaluation? 9 A. That's correct. 10 Q. Okay. And did you engage in that 11 process with your subordinates? 12 A. I did. 13 Q. Same process, it's called a PDC, they 14 self-evaluate and you evaluate them? 15 A. The forms and names have changed over 16 the years, but that's exactly what we do, yeah. 17 Q. I'm going to go over some of your 18 evaluations. 19 The first document -- 20 MR. MARTIN: Can I ask you something? 21 Were these documents all marked? 22 MR. KNAPP: I'm sorry. 23 MR. MARTIN: The standards of 24 conduct, were they marked? I just didn't know if 25 you marked them.</p>	<p style="text-align: right;">Page 124</p> <p>1 that right? 2 A. Yes. 3 Q. Sorry. In this evaluation from 2012, 4 he reports it was probably the worst year ever for 5 you in terms of your numbers. Right? 6 A. Yes. 7 Q. Business declined more than 10 8 million from the year prior? 9 A. Correct. 10 Q. You fell 11 million short of your 11 goal. Right? 12 A. That's correct. 13 Q. And he kind of gives you the benefit 14 of the doubt and says, I think this is an anomaly. 15 It's just a bad year. Right? 16 A. Yes. 17 Q. It looks like your overall 18 evaluation, if you go to page 3, is achieves 19 expectations. Right? 20 A. Yes. 21 - - - 22 (Deposition Exhibit No. Simons-12, 23 Performance-Development-Coaching (PDC), 24 Bates stamped BSC00000215 through 25 BSC00000218, was marked for</p>
<p style="text-align: right;">Page 123</p> <p>1 MR. KNAPP: Yes. 2 MR. MARTIN: That's okay. 3 - - - 4 (Deposition Exhibit No. Simons-11, 5 2011 Performance Achievement and 6 Development Form, 4 pages, was marked for 7 identification.) 8 - - - 9 BY MR. KNAPP: 10 Q. Exhibit 11 is a 2011 performance 11 achievement development evaluation for you. 12 Correct? 13 A. Yes. 14 Q. And if you look at the top, on the 15 first page, it says, "Review Date: March 14, 2012." 16 Do you see that? 17 A. Yes. 18 Q. So this is something given to you in 19 March 2012 about your prior year's performance. 20 Correct? 21 A. Yes. 22 Q. And at this point, your supervisor is 23 Paul Reilly. Right? 24 A. Correct. 25 Q. And he's giving you this feedback; is</p>	<p style="text-align: right;">Page 125</p> <p>1 identification.) 2 - - - 3 BY MR. KNAPP: 4 Q. Exhibit 12 then is your next year's 5 evaluation that was given to you by Guenter Haines. 6 Correct? 7 A. Yes. 8 Q. And Haines is H-A-I-N-E-S. Right? 9 A. Yes. 10 Q. And this would have been given to you 11 in early 2013. Right? 12 A. Either early 2013 or mid year. We 13 had two reviews a year, so I'm not sure which one 14 this is. 15 Q. Then if you turn to page 3, there's a 16 box that's called "Manager Summary." 17 Do you see that? 18 A. Yes. 19 Q. It looks like PDC, if you look at the 20 top, stands for performance development coaching. 21 Right? 22 A. Yes. 23 Q. If you look in that "Manager Summary" 24 box, the third sentence says, "Mike is one of the 25 most talented/instinctual managers in the</p>

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<p style="text-align: right;">Page 126</p> <p>1 organization. When he's personally involved, good 2 things happen." 3 Do you see that? 4 A. Yes. 5 Q. What did you think he meant by that, 6 "when he's personally involved, good things happen"? 7 A. I assumed he meant when I'm part of 8 the sales process, that my skills help benefit the 9 process. 10 Q. And if you look at the fourth -- the 11 last page, you again get an achieves expectations 12 rating. Right? 13 A. Yes. 14 Q. So that's -- on a scale of 1 to 5, 15 there's five possible evaluations to be given. 16 Right? Outstanding, exceeds expectations, achieves 17 expectations, needs improvement or too new to rate. 18 Right? 19 A. Correct. 20 Q. And on that scale you're right in the 21 middle at achieves. Correct? 22 A. On this evaluation, yes. 23 Q. And then if you look above where it 24 says "Personnel Performance Management," do you see 25 that, the box?</p>	<p style="text-align: right;">Page 128</p> <p>1 account as a result of letting Jack go. And I 2 hadn't developed the relationships that I should 3 have in that account prior to moving forward with 4 the termination. 5 Q. And do you think that's what he's 6 talking about? 7 A. I'm not -- again, I don't know what 8 he's talking about, but that could be the cause. 9 - - - 10 (Deposition Exhibit No. Simons-13, 11 E-mail dated 3/4/2014, 7 pages, was marked 12 for identification.) 13 - - - 14 BY MR. KNAPP: 15 Q. Mr. Simons, I'm showing you 16 Exhibit 13, which the first page is an e-mail from 17 is Sam Conaway to you dated March 4, 2014. Correct? 18 A. Uh-huh. Yes, sir. 19 Q. And in it Sam says, "Mike, please 20 sign and send to HR." 21 A. Yes. 22 Q. And at this point, Gary Lickovitch 23 had not been made the area -- 24 A. Area vice president. Right. 25 Q. -- vice president. Correct?</p>
<p style="text-align: right;">Page 127</p> <p>1 A. Yes. 2 Q. It says, "Mike got burned in 2012 3 thinking that everyone on his team is doing their 4 job to the best of their ability. When he 5 personally started inspecting, he realized that was 6 not the case." 7 Do you see that? 8 A. I do. 9 Q. What was that referring to? 10 A. Meaning I started focusing more on 11 inspecting their planning and business plans and 12 then having discussions with my representatives on 13 ways that they could more effectively handle their 14 own territories. And that's what we had discussed 15 in management meetings, that I need to be more hands 16 on with their business plans. 17 Q. And what specifically do you know, if 18 you recall, did he mean by you having got burned in 19 2012? 20 A. I don't recall what he's referring 21 to. 22 Q. Did you learn that you can't just let 23 your sales reps work on autopilot? 24 A. I did. We had an incident with Jack 25 Condon when I let him go, that we lost a large</p>	<p style="text-align: right;">Page 129</p> <p>1 A. Correct. 2 Q. Sam was acting as your direct level 3 supervisor at that point? 4 A. Yes. 5 Q. So is it correct that Sam gives you 6 his evaluation of you and asks you to sign it and 7 give it to HR so it's in your file. Right? 8 A. That's, yes, normal. 9 Q. Do you recall why you didn't sign it 10 and send it to HR? 11 A. I don't recall that. 12 Q. Okay. Let me back up. 13 Do you recall signing this and 14 sending it to HR? 15 A. I don't recall signing this and 16 sending it to HR. 17 Q. So therefore you probably could not 18 answer why you didn't if you don't recall that you 19 didn't. Right? 20 A. Right. 21 Q. Do you recall how you felt about this 22 evaluation? 23 A. I felt there was positive parts to 24 it, but I was a little disappointed with his 25 evaluation of me as far as my seen behavior.</p>

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<p style="text-align: right;">Page 130</p> <p>1 Q. Okay. Did you think it was unfair?</p> <p>2 A. I did feel at that time that it was</p> <p>3 unfair. And I believe the policy at Boston</p> <p>4 Scientific is not to sign a PDC that you don't agree</p> <p>5 with. I'm not positive on that, but that's just</p> <p>6 what I recall people have done to me when I've given</p> <p>7 PDCs they didn't like.</p> <p>8 Q. Okay. I'm sorry, I didn't hear you.</p> <p>9 Did you say you thought the policy</p> <p>10 was if you don't agree with it, you don't sign it?</p> <p>11 A. Yeah. I'm not sure that was the</p> <p>12 policy, but I've had that happen to me as a manager</p> <p>13 before.</p> <p>14 Q. Okay. And is it possible perhaps</p> <p>15 that's why you didn't sign this and send it to --</p> <p>16 A. It's possible, yeah.</p> <p>17 Q. Do you recall telling Sam, I don't</p> <p>18 agree with this?</p> <p>19 A. Yes.</p> <p>20 Q. And I'm not going to sign it?</p> <p>21 A. I don't recall saying I'm not going</p> <p>22 to sign it, but I remember having discussion I don't</p> <p>23 agree with it and I'm disappointed in it.</p> <p>24 Q. So if you go to the third page of --</p> <p>25 excuse me, fourth page of the evaluation, fifth page</p>	<p style="text-align: right;">Page 132</p> <p>1 you also might have been the best in the country?</p> <p>2 A. You know, I was the only regional</p> <p>3 manager to grow their business year over year.</p> <p>4 Q. And it says, "In addition, you won</p> <p>5 the" prestigious, I think it's supposed to say,</p> <p>6 "Stauberg award for multiple P-Club wins."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. What does that mean?</p> <p>10 A. It means you've won five P-Clubs in</p> <p>11 your career.</p> <p>12 Q. Okay. "With all that said," it</p> <p>13 continues, "it has been a challenging year for you</p> <p>14 as a sales leader. Your judgment is one of the most</p> <p>15 important pillars of sales leadership, Mike, in</p> <p>16 2013, this is the one area that is keeping you from</p> <p>17 being rated as an outstanding manager. This is a</p> <p>18 needs improvement area for you as a sales leader.</p> <p>19 Moving forward, I need to see a 360 degree</p> <p>20 turnaround in this important leadership metric."</p> <p>21 Right?</p> <p>22 A. Correct.</p> <p>23 Q. So it goes on to say, "I look forward</p> <p>24 to your develop" -- development probably -- "in</p> <p>25 2014. In order to continue as a manager in good</p>
<p style="text-align: right;">Page 131</p> <p>1 of the exhibit, there's an overall self-evaluation.</p> <p>2 So this is the preceding page to the one you're at.</p> <p>3 A. Okay.</p> <p>4 Q. Right there. And you had given</p> <p>5 yourself a successful overall self-evaluation.</p> <p>6 Right?</p> <p>7 A. Correct.</p> <p>8 Q. And then the next two pages are Sam's</p> <p>9 evaluation of you. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. And if you go to the second page, he</p> <p>12 also gives you a successful overall rating. Right?</p> <p>13 A. Correct.</p> <p>14 Q. But he gives you some tough feedback.</p> <p>15 Right?</p> <p>16 A. Correct.</p> <p>17 Q. He commends you for having been the</p> <p>18 only regional manager hit the plan in the east?</p> <p>19 A. In the company, I believe it was.</p> <p>20 Q. Okay. This says, "In 2013, you are</p> <p>21 the only RM to hit plan for the year in the East and</p> <p>22 the only regional manager in the East to win</p> <p>23 P-Club." Right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. But you're saying you think</p>	<p style="text-align: right;">Page 133</p> <p>1 standing at BSC, in 2014, you must demonstrate good</p> <p>2 leadership judgment with no infractions. As I wrote</p> <p>3 in your corrective action, any future lapse in good</p> <p>4 judgment could lead to termination."</p> <p>5 Right? Is that what he said?</p> <p>6 A. Not exactly what he said, is it? Am</p> <p>7 I reading it wrong?</p> <p>8 Q. Did I misspeak?</p> <p>9 A. Could you repeat the question to me?</p> <p>10 Q. Well, he basically said, any future</p> <p>11 lapses in good judgment could lead to termination.</p> <p>12 Right? I'm looking at the second paragraph. This</p> <p>13 is the last sentence.</p> <p>14 MR. MARTIN: The last line -- you're</p> <p>15 on the wrong page.</p> <p>16 THE WITNESS: That's the problem.</p> <p>17 I'm on the wrong page.</p> <p>18 MR. KNAPP: Back where you were. You</p> <p>19 were on the right page. The "Manager Summary."</p> <p>20 MR. MARTIN: "Manager Summary."</p> <p>21 MR. KNAPP: Second paragraph.</p> <p>22 THE WITNESS: Okay. I'm looking at</p> <p>23 the wrong section. Sorry. Yes.</p> <p>24 MR. MARTIN: He was quoting the last</p> <p>25 sentence, "As I wrote in your corrective action, any</p>

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<p style="text-align: right;">Page 134</p> <p>1 future lapse in good judgment could lead to 2 termination." 3 THE WITNESS: That's correct. 4 BY MR. KNAPP: 5 Q. So March 2014, you're told any future 6 lapse in judgment, you could be fired? 7 A. That's correct. 8 MR. MARTIN: Probably -- I'm going to 9 object. It said, "per your corrective action." 10 MR. KNAPP: I'm sorry, what was your 11 objection? 12 MR. MARTIN: That you didn't 13 paraphrase it correctly. He said, "As I wrote in 14 the corrective action." So he's referring to the 15 corrective action. Then he says the remainder of 16 the sentence. 17 BY MR. KNAPP: 18 Q. As of March 2014, he's telling you 19 that any future lapse in good judgment could lead to 20 termination. Correct? 21 A. Correct. 22 Q. And he goes on, if you look down at 23 the bottom box, it says, "Mike, during your time 24 reporting to me I've seen behavior that is very 25 detrimental to your leadership role." Correct?</p>	<p style="text-align: right;">Page 136</p> <p>1 and my ability to develop people and move me to the 2 next level. 3 Q. Which would be the job that 4 ultimately Gary Lickovitch was put in. Right? 5 A. Or a role similar to that. There are 6 other jobs that are viewed as an advancement in the 7 company. 8 Q. Did you apply for a promotion to that 9 role? 10 A. Yes. 11 Q. Were you hoping to get that before 12 you got this review? 13 A. I was hoping to be in the running for 14 it. I've done things at Boston Scientific that 15 they've developed me to move forward in the company. 16 Q. And by this, when you got this 17 review, you understood that wasn't going to happen. 18 Right? 19 A. I did. 20 Q. And that was disappointing? 21 A. Yes. 22 Q. Did you -- and March 2014 would have 23 been after your divorce with Lacia. Correct? 24 A. Yes. 25 Q. And after you'd started drinking</p>
<p style="text-align: right;">Page 135</p> <p>1 A. Correct. 2 Q. And you go on, the last sentence of 3 that says, "I will need to see no judgment 4 challenges for the next 2 years to consider you for 5 future career advancement. 6 "Mike, I want to be very clear with 7 you. Correcting your leadership judgment is 8 critical for you to remain in your current role." 9 A. Correct. 10 MR. MARTIN: My objection is you 11 missed an entire sentence there that said, "Based on 12 the recent corrective action, you must comply" with 13 "the metrics outlined in the corrective action." So 14 you're -- excuse me, you're taking it out of 15 context. 16 MR. KNAPP: I disagree, but you're 17 free to put that context in there. 18 MR. MARTIN: Uh-huh. 19 BY MR. KNAPP: 20 Q. So had you had conversations with Sam 21 about wanting to advance further within the company? 22 A. Yes. 23 Q. And what was your hope? 24 A. Well, my hope is that he would view 25 me as a strong leader and recognize my sales success</p>	<p style="text-align: right;">Page 137</p> <p>1 more. Right? 2 A. Yes. 3 - - - 4 (Deposition Exhibit No. Simons-14, 5 E-mail dated 2/14/2014, Bates stamped 6 BSC00002036 through BSC00002039, was 7 marked for identification.) 8 - - - 9 BY MR. KNAPP: 10 Q. Showing you what's been marked as 11 Exhibit 18, Mr. Simons, is this a corrective action 12 letter that you received from Sam Conaway in 13 February 2014? 14 A. It is. 15 Q. So this was a month prior to this -- 16 the evaluation that we just looked at. Right? 17 A. That's correct. 18 Q. And the cover e-mail says, among 19 other things, that as a result of this corrective 20 action letter, he's removing you from the trusted 21 advisor sales -- excuse me, the trusted advisor team 22 for sales force 2014? 23 A. That's correct. 24 Q. What is the trusted advisor team? 25 A. It's a made up review team that Sam</p>

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<p style="text-align: right;">Page 138</p> <p>1 had put together that would help -- you know, I'm 2 not sure exactly what their purpose was, but they 3 would get together and have discussions about the 4 sales force. 5 Q. So different regional managers? 6 A. Yes. 7 Q. And at that point, how many were on 8 the trusted advisor team for sales force? 9 A. I have no idea. 10 Q. Did you not really care about that? 11 A. Not at all. 12 Q. You didn't think that was important? 13 A. I actually did not feel that was 14 anything that was important to me, no. 15 Q. And your reaction is kind of like so 16 what. Right? 17 A. Yeah. At that point I was, you know, 18 disappointed that he made any move like that at all, 19 but I wasn't so upset that I wasn't part of that 20 trusted advisor team, no. 21 Q. Is it fair to say that you didn't 22 entirely respect Sam Conaway? 23 A. That's fair to say. 24 Q. You thought you were smarter than 25 him?</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. Do you recall that dinner? 2 A. Yes. 3 Q. And Dr. Chiu Wong is the director of 4 the catheterization lab at Cornell? 5 A. That's correct. 6 Q. Is he a significant customer? 7 A. He is in that region. 8 Q. And he says, during the dinner you 9 were not able to follow the conversation and had 10 unprompted outbursts of laughter? 11 A. That's absolutely incorrect. 12 Q. It didn't happen? 13 A. I did have laughter through -- Dr. 14 Wong and I have a personal relationship and we're 15 friendly. What I do remember about the dinner is 16 that Sam Conaway had a confrontation with Dr. Wong 17 about not involving Dr. Wong in his studies because 18 Dr. Wong didn't favor Boston Scientific for their 19 stent business. In fact, Sam's exact quote was, you 20 know how this works, Chiu. So what I do remember 21 from this dinner is Sam left angry from it and left 22 before the dinner was over. 23 Q. Okay. And was he angry at your 24 behavior? 25 A. He didn't make any comment about my</p>
<p style="text-align: right;">Page 139</p> <p>1 A. No. 2 Q. You thought you were more effective 3 than him? 4 A. No. 5 Q. Okay. If you look at the second 6 page, so the actual -- no. Sorry, the second page 7 of the exhibit, which is the first page of this 8 written corrective action, what was your reaction 9 when you got this? 10 A. My initial reaction was I think he 11 was exaggerating in each case. And while he feels 12 he wasn't completely making it up, I think it was 13 going overboard to what the situation was. 14 Q. So he identified several situations 15 that he observed? 16 A. Yes. 17 Q. That you -- where you were 18 essentially drunk during a work function. Right? 19 A. That's his interpretation. 20 Q. And the first is dinner with Dr. 21 Chiu -- is it Dr. Chiu or Dr. Wong? 22 A. It's Dr. Chiu Wong. 23 Q. And that dinner was on October 30, 24 2013. Right? 25 A. Yes.</p>	<p style="text-align: right;">Page 141</p> <p>1 behavior that night. The first I heard about it was 2 this. 3 Q. He also says, "You were not focused 4 on the strategy that was to be accomplished during 5 the physician meeting. In summary your behavior was 6 unprofessional and you exhibited poor judgment." 7 A. I disagree with that. I'm not sure 8 what the strategy would have been with getting into 9 a confrontation with a large customer as Sam did. 10 Q. And to the extent you laughed at the 11 dinner, were you laughing at Sam? 12 A. No. 13 Q. What were you laughing about? 14 A. I don't recall what we were laughing 15 about. It was a social dinner with someone that I 16 enjoy their company. 17 Q. It goes on to refer to a kickoff 18 meeting with The Medicines Company in New Jersey on 19 December 18, 2013. Right? 20 A. Yes. 21 Q. He said it was a key strategy for the 22 interventional cardiology sales team. 23 Is that -- do you agree with that? 24 A. I agree he believed it was. 25 Q. And he says, during that meeting I</p>

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<p style="text-align: right;">Page 142</p> <p>1 noticed how disruptive your behavior was to the 2 meeting's objectives. You slurred your speech and 3 you repeated comments several times. 4 Do you deny that you were slurring 5 your speech? 6 A. I deny I was slurring my speech. 7 Q. And that you repeated your comments? 8 A. I don't recall repeating my comments. 9 What I recall is making a joke when we were doing 10 introductions. And any time that I was out of 11 character for Sam Conaway, whether it was excitement 12 or happiness, that he perceived it as, you know, 13 there -- he must be under the influence. That was 14 my perception. 15 Q. Did he feel that way about other 16 people, to your knowledge, that they were under the 17 influence when they were acting happy or out of 18 their normal character? 19 A. I can't speak for Sam Conaway. I 20 just know that I've been with the company for 15 21 years and never had a corrective action taken 22 against me. So I think Sam's perceptions were Sam's 23 perceptions. 24 Q. This is also during a period when you 25 began drinking heavily. Correct?</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. He says, "During" the "awards 2 ceremony I along with several senior leaders 3 observed your girlfriend in attendance at the awards 4 ceremony which was inappropriate and poor judgment 5 to have your girlfriend attend the National Sales 6 Meeting." Right? 7 A. I saw that he wrote that. 8 Q. Was Anna Knighten with you at this 9 meeting? 10 A. Anna Knighten was with me at the 11 hotel at that meeting. Correct. 12 Q. Was she in attendance at the awards 13 ceremony? 14 A. Yes. But Sam would not let me 15 explain why she was in attendance. 16 Anna Knighten was a previous employee 17 of Boston Scientific and was invited in to the 18 meeting by her Memphis team, specifically Rick 19 Hayes. 20 Q. Okay. 21 A. She was sitting at that table. When 22 I received the Stauberg award, she came from that 23 table to my table to congratulate me. 24 Q. And shook your hand and then went 25 back to her table?</p>
<p style="text-align: right;">Page 143</p> <p>1 A. No, I didn't say heavily. I said 2 drinking more. And clearly at this point I feel 3 like it wasn't affecting my performance, because I 4 just won a President's Club and had a great year. 5 Q. Right. But he's telling you it's 6 affecting your performance. Correct? 7 A. That's his perception. I don't feel 8 that it was. And I think this was overblown and 9 unfair. 10 Q. This is at the same period of time 11 that your ex-wife Lacia is complaining about your 12 drinking. Right? 13 A. That's correct. But alcohol was 14 served at this function, and I witnessed many people 15 drinking. 16 Q. Were they drunk? 17 A. Not to my recollection, no. 18 Q. It goes on to say, "On December 29... 19 there was a Pre-NSM Managers meeting." 20 Do you see that? 21 A. Yes. 22 Q. Do you recall him stressing the 23 importance of each manager leading by example to 24 ensure that we don't exhibit inappropriate conduct? 25 A. Yes.</p>	<p style="text-align: right;">Page 145</p> <p>1 A. No. She sat with us for a second as 2 the meeting went on. 3 Q. Did you make out with her at all at 4 that meeting? 5 A. No. I was surrounded my subordinates 6 and team. And that is what I didn't agree with. 7 Sam Conaway, one, didn't listen to my explanation of 8 what had happened; and two, completely made up and 9 exaggerated, in my opinion, her hands were all over 10 me, grabbing me, making out is what he said. And 11 that just didn't happen. 12 Q. Okay. Did you understand spouses and 13 significant others were not invited? 14 A. I absolutely did. 15 Q. Did you know that she had been 16 invited before she showed up? 17 A. Invited where? 18 Q. To this meeting. 19 A. No, I didn't know she had been 20 invited. In fact, I had no idea that she had any 21 plans to see her team from the Memphis area that 22 night. 23 Q. Was she staying with you that 24 weekend? 25 A. She was.</p>

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<p style="text-align: right;">Page 146</p> <p>1 Q. Did you drive there together?</p> <p>2 A. Flew. I think -- where was the</p> <p>3 meeting?</p> <p>4 Q. I don't --</p> <p>5 A. This was a flight, I believe.</p> <p>6 Q. Where was the meeting?</p> <p>7 A. I think it was Florida, if I recall.</p> <p>8 Q. Okay. Did you stay in the same hotel</p> <p>9 room with her?</p> <p>10 A. We did.</p> <p>11 Q. Okay. Did you walk down to the</p> <p>12 meeting together?</p> <p>13 A. No.</p> <p>14 Q. You did not know before the meeting</p> <p>15 started that she was going to attend?</p> <p>16 A. That's absolutely correct.</p> <p>17 Q. And at that point, she was a former</p> <p>18 employee of Boston Scientific?</p> <p>19 A. That's correct.</p> <p>20 Q. And who paid for her flight?</p> <p>21 A. I'm not sure if I did or she did. We</p> <p>22 may have used miles. I'm not positive of how that</p> <p>23 was paid for.</p> <p>24 Q. Okay. So --</p> <p>25 A. Not expensed, if that's --</p>	<p style="text-align: right;">Page 148</p> <p>1 Tom Donlan's wife?</p> <p>2 A. It is.</p> <p>3 Q. Who else?</p> <p>4 A. No one that I recall. But there were</p> <p>5 other spouses there, I just don't recall who they</p> <p>6 were.</p> <p>7 Q. At the meeting?</p> <p>8 A. Yeah. There usually are other</p> <p>9 spouses at the meetings.</p> <p>10 Q. Was Jeanne Donlan at the awards</p> <p>11 ceremony?</p> <p>12 A. Yes.</p> <p>13 Q. Did you invite her in?</p> <p>14 A. No.</p> <p>15 Q. How did she get invited?</p> <p>16 A. I have -- I have no idea. She was --</p> <p>17 Q. She is married to Tom Donlan, who was</p> <p>18 your subordinate?</p> <p>19 A. Tom Donlan was a manager in Seattle.</p> <p>20 Q. Okay.</p> <p>21 A. I just know she was there.</p> <p>22 Q. At the awards ceremony?</p> <p>23 A. That's correct.</p> <p>24 Q. All right. It says, "Many of your</p> <p>25 colleagues and direct reports were" ordered -- "were</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. What's that?</p> <p>2 A. Not expensed.</p> <p>3 Q. So you made it kind of a vacation for</p> <p>4 the two of you?</p> <p>5 A. Absolutely. She had plans to, you</p> <p>6 know, relax at a nice resort while I had my business</p> <p>7 meeting.</p> <p>8 Q. And were there other spouses and</p> <p>9 significant others at the meeting?</p> <p>10 A. Absolutely.</p> <p>11 Q. Just not in the meetings?</p> <p>12 A. Incorrect.</p> <p>13 Q. Who else?</p> <p>14 A. So Jeanne Donlan was in the meeting,</p> <p>15 and she's not part of the IC crew. And --</p> <p>16 Q. Is she a Boston Scientific employee?</p> <p>17 A. She's a Boston Scientific employee</p> <p>18 but was not invited to the awards dinner.</p> <p>19 Q. Okay.</p> <p>20 A. So it has happened in the past that</p> <p>21 previous and former employees meet with their</p> <p>22 friends and talk.</p> <p>23 Q. So let's talk about this meeting,</p> <p>24 though.</p> <p>25 Other than Jeanne Donlan -- is that</p>	<p style="text-align: right;">Page 149</p> <p>1 offended and expressed their concern about your</p> <p>2 conduct while your girlfriend was in attendance at</p> <p>3 the awards ceremony."</p> <p>4 Are you aware of that?</p> <p>5 A. I am not. I know he said it, but he</p> <p>6 never elaborated on who that was.</p> <p>7 Q. "After the awards ceremony, I</p> <p>8 approached you and shared my disappointment in your</p> <p>9 lack of judgment and professional" judge -- excuse</p> <p>10 me, "professional behavior."</p> <p>11 Do you recall that happening?</p> <p>12 A. I do.</p> <p>13 Q. And what did you say in response?</p> <p>14 A. I said, I would like to discuss that</p> <p>15 with you, I think something to that effect, being</p> <p>16 that he didn't understand the entire circumstance.</p> <p>17 Q. Okay. And didn't say anything else?</p> <p>18 A. He responded to me. That was I think</p> <p>19 something along the lines of that's poor judgment, I</p> <p>20 wanted to pop some bottles with you. I would have</p> <p>21 invited you up to my private party, which he did not</p> <p>22 at that point. But his exact quote was, you just</p> <p>23 won P Club. I wanted to pop some bottles with you.</p> <p>24 Q. So what's the connection between that</p> <p>25 and your having a girlfriend -- having Anna with you</p>

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<p style="text-align: right;">Page 150</p> <p>1 at the awards ceremony?</p> <p>2 A. My connection is that he decided to</p> <p>3 not invite me to his private room party.</p> <p>4 Q. Okay. And did you explain to him why</p> <p>5 Anna was there?</p> <p>6 A. He didn't give me that opportunity.</p> <p>7 Q. Okay. And then he talks about on</p> <p>8 February 5, 2014 he received a called from you at</p> <p>9 5:15 p.m. He returned your call later at around</p> <p>10 6:30 and he thought your engagement and thought</p> <p>11 process was questionable during that call.</p> <p>12 Do you recall that phone</p> <p>13 conversation?</p> <p>14 A. I don't recall that -- I don't recall</p> <p>15 that specific conversation.</p> <p>16 Q. Do you recall having a conversation</p> <p>17 with him where you were intoxicated?</p> <p>18 A. No.</p> <p>19 Q. So did you sign off on this</p> <p>20 version --</p> <p>21 A. I signed off on this. It was my</p> <p>22 understanding that when you get a corrective action,</p> <p>23 when you sign it, it's acknowledgment of the</p> <p>24 corrective action as opposed to agreement with the</p> <p>25 corrective action.</p>	<p style="text-align: right;">Page 152</p> <p>1 A. Yes.</p> <p>2 Q. "Please send me an e-mail once you've</p> <p>3 done this and let me know if you have any</p> <p>4 questions."</p> <p>5 A. Yes.</p> <p>6 Q. Did you review the code of conduct</p> <p>7 policy?</p> <p>8 A. I believe I glanced through it, yes.</p> <p>9 Q. You didn't read it?</p> <p>10 A. I read portions of it that would</p> <p>11 pertain to any of this, I believe.</p> <p>12 Q. Did you send him an e-mail saying</p> <p>13 you'd done so?</p> <p>14 A. As I recall, I think I did, but I</p> <p>15 can't be definitive.</p> <p>16 Q. It says, "It is also important that</p> <p>17 you prepare for meetings, prepare for presentation,</p> <p>18 and be on time."</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. "During the discussions with</p> <p>22 customers, leaderships or your own team members you</p> <p>23 should be engaged in the conversation, focused on</p> <p>24 the business strategy and goals of the meeting at</p> <p>25 hand." Right?</p>
<p style="text-align: right;">Page 151</p> <p>1 Q. So then why didn't you sign off on</p> <p>2 your evaluation?</p> <p>3 A. I'm not sure why I did not sign off</p> <p>4 at that time.</p> <p>5 - - -</p> <p>6 (Deposition Exhibit No. Simons-15,</p> <p>7 Memorandum dated February 14, 2014, Bates</p> <p>8 stamped BSC00001385 through BSC00001387,</p> <p>9 was marked for identification.)</p> <p>10 - - -</p> <p>11 BY MR. KNAPP:</p> <p>12 Q. Showing you what's been marked as</p> <p>13 Exhibit 15, that's your signed version. Right?</p> <p>14 So let me back up.</p> <p>15 Is that your signature on page 3 of</p> <p>16 this document?</p> <p>17 A. That is.</p> <p>18 Q. On the section 2 on page 2 of that</p> <p>19 document --</p> <p>20 A. Yep.</p> <p>21 Q. -- second paragraph of section 2</p> <p>22 says, "As a result of my concern about your</p> <p>23 professional behavior it is expected that you read</p> <p>24 and review the Code of Conduct Policy by March 1,</p> <p>25 2014." Correct?</p>	<p style="text-align: right;">Page 153</p> <p>1 A. Yes.</p> <p>2 Q. The third paragraph, he says, "I am</p> <p>3 available if you have questions or need advice if</p> <p>4 you're faced with a difficult situation and need to</p> <p>5 make a judgment decision. Michele DeCoux, HR</p> <p>6 Business Partner, is also a resource to you if you</p> <p>7 have questions or need assistance." Right?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall then following up with</p> <p>10 Michele DeCoux about this?</p> <p>11 A. I believe we spoke about it, yes.</p> <p>12 Q. Do you recall -- what do you recall</p> <p>13 about that conversation?</p> <p>14 A. I don't recall the conversation</p> <p>15 exactly. I think she had mentioned to me that Sam</p> <p>16 was concerned about, you know, we had just -- about</p> <p>17 judgment and drinking possibly. I don't recall the</p> <p>18 conversation directly, but I know we spoke at a</p> <p>19 meeting about this.</p> <p>20 Q. Do you recall what you said to her</p> <p>21 about it?</p> <p>22 A. I don't. I think I said I don't</p> <p>23 agree with everything in there, because that was my</p> <p>24 feeling about the document.</p> <p>25 Q. This dinner with Dr. Chiu Wong --</p>

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<p style="text-align: right;">Page 158</p> <p>1 Q. Showing you what's been marked as</p> <p>2 Exhibit 16.</p> <p>3 A. Okay.</p> <p>4 Q. This is an e-mail chain between you</p> <p>5 and your wife that looks like it begins on Monday,</p> <p>6 January 27, 2014. Right?</p> <p>7 A. It does.</p> <p>8 MR. MARTIN: The last page the chain</p> <p>9 starts.</p> <p>10 THE WITNESS: Okay.</p> <p>11 BY MR. KNAPP:</p> <p>12 Q. So if you look through this, it looks</p> <p>13 like there's an e-mail from school about -- an</p> <p>14 e-mail to kindergarten families. Right?</p> <p>15 A. Okay. Yes.</p> <p>16 Q. And you forwarded it on to Lacia,</p> <p>17 saying, did you get this, and she says yes. Right?</p> <p>18 A. Okay. Yes.</p> <p>19 Q. You respond say, I'm on the plane, I</p> <p>20 miss them already. Correct?</p> <p>21 A. Yes.</p> <p>22 Q. And then she sends you a long e-mail</p> <p>23 on the top of page 2 on January 27th. Right?</p> <p>24 A. Yes.</p> <p>25 Q. She's upset with you, right, about</p>	<p style="text-align: right;">Page 160</p> <p>1 actually only the second. Right?</p> <p>2 A. It was the second that I recall.</p> <p>3 Q. In any event, on the second page,</p> <p>4 Lacia says, "If there is ONE more incident involving</p> <p>5 alcohol, fighting OR the police, I will take action</p> <p>6 to remove the children from that environment</p> <p>7 indefinitely." Right?</p> <p>8 A. Yes.</p> <p>9 Q. So you are being told by her in your</p> <p>10 personal life any more alcohol incidents, you don't</p> <p>11 get to see the kids anymore?</p> <p>12 A. Correct.</p> <p>13 Q. At the same time, your employer is</p> <p>14 telling you, any more alcohol bad judgment issues,</p> <p>15 you're going to be fired. Right?</p> <p>16 A. Okay. Yes.</p> <p>17 Q. And then she says in this e-mail on</p> <p>18 the first page, "As you know, I was arrested under</p> <p>19 false charges on your behalf after you hit me in the</p> <p>20 face. You are an abuser. Period."</p> <p>21 Do you see that?</p> <p>22 A. I see that.</p> <p>23 Q. Do you deny that?</p> <p>24 A. I deny that. And the police -- and</p> <p>25 the police verified. They arrested her and not me.</p>
<p style="text-align: right;">Page 159</p> <p>1 what had happened?</p> <p>2 MR. MARTIN: You should read the</p> <p>3 whole e-mail before you answer. It starts on the</p> <p>4 first page.</p> <p>5 BY MR. KNAPP:</p> <p>6 Q. Between you and Anna?</p> <p>7 MR. MARTIN: I'm sorry, hers is on</p> <p>8 the second page. Yours is on the first page.</p> <p>9 THE WITNESS: Okay.</p> <p>10 BY MR. KNAPP:</p> <p>11 Q. So Anna expresses to you her anger</p> <p>12 about you having the children and there's a domestic</p> <p>13 disturbance, physical violence that takes place at</p> <p>14 your house and the kids witness it again. Right?</p> <p>15 A. I believe that Lacia --</p> <p>16 Q. What did I say?</p> <p>17 A. Anna.</p> <p>18 Q. So Lacia sends you this e-mail</p> <p>19 expressing her anger. Correct?</p> <p>20 A. Yes.</p> <p>21 Q. And she says, this is the third</p> <p>22 domestic violence call between you and Anna in the</p> <p>23 last nine months. Right?</p> <p>24 A. Yes.</p> <p>25 Q. You responded and said, well, it's</p>	<p style="text-align: right;">Page 161</p> <p>1 Q. And you respond, "Fuck you Bitch"?</p> <p>2 A. That's correct.</p> <p>3 Q. Were you drinking when you sent that</p> <p>4 e-mail?</p> <p>5 A. No, not that I recall.</p> <p>6 Q. You might have been?</p> <p>7 A. I don't think so.</p> <p>8 No, I was not. It's 9:27 a.m.</p> <p>9 - - -</p> <p>10 (Deposition Exhibit No. Simons-17,</p> <p>11 Memorandum dated June 13, 2014, Bates</p> <p>12 stamped BSC00000225 through BSC00000227,</p> <p>13 was marked for identification.)</p> <p>14 - - -</p> <p>15 BY MR. KNAPP:</p> <p>16 Q. Showing you what's been marked as</p> <p>17 Exhibit 17.</p> <p>18 In June -- on June 13, 2014, you</p> <p>19 received a final corrective action from Sam Conaway.</p> <p>20 Correct?</p> <p>21 A. Yes.</p> <p>22 Q. Where he mentions continued poor</p> <p>23 judgment and inappropriate interactions. Correct?</p> <p>24 A. Yes.</p> <p>25 Q. And he is -- among the things he</p>

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<p>1 identifies is that there was an our evolution 2 regional manager meeting in the first week of June 3 2014. Right? 4 A. Correct. 5 Q. And he said, at the kickoff he 6 specifically said, I want the focus not on fun or 7 drinking or celebrating but on work here. Right? 8 A. That's what he says, yes. 9 Q. Do you recall him saying that? 10 A. I don't recall that. 11 Q. Do you deny he said it? 12 A. No. I just don't recall it. 13 Q. Okay. And then you went on a dinner 14 with Kevin Ballinger with the group; is that 15 correct? 16 A. Correct. 17 Q. He says, you left the meeting on 18 Tuesday in the late afternoon and when you returned, 19 you asked your new director an inappropriate 20 question about his age. 21 A. That's what's written here, yes. 22 Q. Who's the new director he's referring 23 to here? 24 A. Gary Lickovitch. 25 Q. Okay.</p>	<p>1 A. We had discussions amongst ourselves, 2 yes. 3 Q. You told people that? 4 A. Yes, I did. 5 Q. So is this the first time you met 6 Gary? 7 A. I don't recall. No, I believe it 8 wasn't the first time I met. He was in a different 9 role with Boston Scientific. 10 Q. This is the first time you were with 11 him in his capacity as your manager? 12 A. I believe so, yes. 13 Q. Is it kind of an alpha dog thing to 14 say, hey, how old are you? 15 A. No. I was actually curious how old 16 he was. He had talked about playing football for 17 Ohio State, and I was curious what years he was 18 there. 19 Q. You didn't ask him what years you 20 were there. You said, how old are you? 21 A. Yeah. I don't know exactly what the 22 terminology was. 23 Q. Okay. He says that on the walk to 24 dinner you continued to ask inappropriate questions 25 and exhibit poor judgment.</p>
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<p>1 A. I think I asked him how old he was. 2 Q. Okay. 3 A. I don't know why that's 4 inappropriate. It was just a curiosity question. 5 Q. And this is a guy that had been hired 6 in the position that you actually wanted. Right? 7 A. That's correct. 8 Q. And you didn't like Gary either, did 9 you? 10 A. I thought Gary was incompetent. 11 Q. You thought he was a moron? 12 A. I don't know that I've used that 13 word, but... 14 Q. Did you tell other people you thought 15 he was incompetent? 16 A. We had discussions among our team and 17 managers that they felt the same way. 18 Q. Did you tell people you thought he 19 was a moron? 20 A. I don't know that I used that word. 21 Q. Okay. Idiot? 22 A. I'm not sure I used that word either, 23 but I felt he was incompetent for the role that he 24 was -- that he was working in. 25 Q. And you told people that?</p>	<p>1 Do you recall him -- 2 A. I don't recall doing any of that, and 3 he never specified what the inappropriate questions 4 were. 5 Q. It says, it was evident that you had 6 multiple alcoholic beverages before dinner despite 7 my instructions not to. 8 Had you drunk -- 9 A. I had had alcohol that night with 10 several managers prior to dinner. We had free time 11 and we went and met for drinks, which was pretty 12 common at sales meetings. 13 Q. Did you leave the meeting early to go 14 have drinks? 15 A. I didn't leave the meeting early at 16 all. They released us. 17 Q. And were you drunk that night? 18 A. Not to my recollection. 19 Q. He said you were slurring your words 20 and speaking in an incoherent manner. 21 Do you recall that? 22 A. I don't recall it. 23 Q. Do you deny it? 24 A. I don't deny it. I don't recall. 25 Q. Okay. So if he had already given you</p>

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<p style="text-align: right;">Page 166</p> <p>1 a final -- or excuse me, a written corrective action</p> <p>2 in February saying any more bad judgment, drinking</p> <p>3 behavior, you could be fired, why are you doing this</p> <p>4 in June 2014?</p> <p>5 A. Well, I didn't believe that drinking</p> <p>6 with fellow managers and colleagues was</p> <p>7 demonstrating bad judgment.</p> <p>8 Q. How about getting drunk to the point</p> <p>9 where you're slurring your words and speaking</p> <p>10 incoherently?</p> <p>11 A. I clearly didn't realize that that</p> <p>12 was the perception of what happened. I didn't think</p> <p>13 I was drunk.</p> <p>14 Q. So he met with you the next day; is</p> <p>15 that right?</p> <p>16 A. He did.</p> <p>17 Q. And what did he say?</p> <p>18 A. The next morning. He was</p> <p>19 disappointed that he -- that I thought I had had a</p> <p>20 good meeting with Kevin Ballinger discussing</p> <p>21 potential, you know, advancement in the company and</p> <p>22 some contracts and apparently Sam felt that Kevin</p> <p>23 was upset that I had drank prior to having dinner</p> <p>24 with him.</p> <p>25 Q. Was he upset that you drank or was he</p>	<p style="text-align: right;">Page 168</p> <p>1 be put on an indefinite corrective action. I</p> <p>2 thought it was clearly defined that corrective</p> <p>3 actions have a definitive time frame where there's</p> <p>4 follow-up and you're either continued on to the next</p> <p>5 or final stage of your corrective action or the</p> <p>6 corrective action is canceled and you move forward</p> <p>7 with your career.</p> <p>8 Q. And where does it say that in here?</p> <p>9 A. I believe that's outlined somewhere</p> <p>10 that we had reviewed in the policies that Boston</p> <p>11 Scientific lays forth on corrective actions.</p> <p>12 Q. Does it say that here?</p> <p>13 A. It does not say that here.</p> <p>14 Q. Did Sam Conaway tell you that was the</p> <p>15 case?</p> <p>16 A. He told me that this -- I said, is</p> <p>17 this going to be for the rest of my career. He said</p> <p>18 yes.</p> <p>19 Q. Okay. Did you think that it would be</p> <p>20 okay to get drunk and exhibit poor judgment and</p> <p>21 inappropriate behavior after a period of time?</p> <p>22 A. First of all, no, I did not.</p> <p>23 Q. Okay.</p> <p>24 A. And that was not my intention.</p> <p>25 Q. Is there a second?</p>
<p style="text-align: right;">Page 167</p> <p>1 upset you were drunk?</p> <p>2 A. He said he was upset that I was</p> <p>3 drinking at a business meeting, a meeting that was</p> <p>4 supposed to be focused on business. He didn't</p> <p>5 mention the word "drunk" to my recollection.</p> <p>6 Q. So again, in this final corrective</p> <p>7 action, he says, "Modifying your behavior is</p> <p>8 critical for your continued employment." Right?</p> <p>9 A. Correct.</p> <p>10 Q. What did you understand him to mean</p> <p>11 by modifying your behavior?</p> <p>12 A. We had had the discussion at the</p> <p>13 point where he would rather that I not drink when we</p> <p>14 were at national -- when we were at meetings. I</p> <p>15 think he was -- he was talking about making better</p> <p>16 judgment calls.</p> <p>17 Q. And you committed to him, I won't</p> <p>18 drink at any more BSE meetings. Right?</p> <p>19 A. That's correct.</p> <p>20 Q. And did you?</p> <p>21 A. I did not for an extended period of</p> <p>22 time.</p> <p>23 Q. Okay.</p> <p>24 A. I refrained from it. And what my</p> <p>25 understanding of the policy was, is that you can't</p>	<p style="text-align: right;">Page 169</p> <p>1 A. No, no, there's no second.</p> <p>2 MR. MARTIN: His answer was twofold.</p> <p>3 BY MR. KNAPP:</p> <p>4 Q. So you knew, this is now two strikes.</p> <p>5 Right?</p> <p>6 A. Correct.</p> <p>7 Q. According to Sam?</p> <p>8 A. According to Sam.</p> <p>9 Q. All involving drinking too much and</p> <p>10 exhibiting poor judgment and poor behavior. Right?</p> <p>11 A. Correct.</p> <p>12 Q. Did you think that if something like</p> <p>13 that happened again, that they would keep you on as</p> <p>14 an employee?</p> <p>15 A. I did.</p> <p>16 Q. Why?</p> <p>17 A. First, because I had -- I had shown a</p> <p>18 consistent path that I was not drinking at meetings</p> <p>19 and my team was doing well and Gary was giving me</p> <p>20 many accolades at this point saying that I could</p> <p>21 really bring home the business and that type of</p> <p>22 thing. And second, because I've had a successful</p> <p>23 track record for 15 years at Boston Scientific, that</p> <p>24 I think they would have taken that into account.</p> <p>25 Frankly, I didn't expect it to happen</p>

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<p style="text-align: right;">Page 170</p> <p>1 again, but I was not overly concerned about being 2 terminated at this point.</p> <p>3 Q. Do you think all those things you 4 just said might explain why he didn't fire you at 5 this point?</p> <p>6 A. I think -- yeah. I think that had to 7 weigh into it. Sure.</p> <p>8 Q. Right. You were a great performer. 9 Right?</p> <p>10 A. Yeah.</p> <p>11 Q. And so it would have to take an awful 12 lot to fire you. Right?</p> <p>13 A. I would -- I would have, yeah, 14 expected so.</p> <p>15 Q. So Gary was promoted to northeast VP 16 in June of 2014. Right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And we recall -- we talked 19 earlier about him riding along with you, and I don't 20 think I put a time to it, but I think it was August 21 2014 where you got in a altercation with a cab 22 driver?</p> <p>23 A. Yeah. And as I -- as I recollect, I 24 believe that Gary laughed at that point, thinking it 25 was funny.</p>	<p style="text-align: right;">Page 172</p> <p>1 felt that, you know, Sam was being overboard with 2 his corrective actions and then Gary was put in 3 place to -- as kind of a watchdog for Sam.</p> <p>4 Q. And you had the president of the 5 division saying you were acting inappropriately. 6 Right?</p> <p>7 A. That was reported to me by Sam, not 8 by the president of the division.</p> <p>9 Q. Okay. Did you ever -- are you aware 10 of any facts to suggest that's not true?</p> <p>11 A. No.</p> <p>12 Q. And were you concerned about that?</p> <p>13 A. Yeah. I was surprised and concerned.</p> <p>14 Q. Do you recall telling Gary that I had 15 you all wrong, I actually like working with you?</p> <p>16 A. Listen, I believe that people say 17 things. I don't recall saying that specifically, 18 no. It's very possible, though.</p> <p>19 Q. Did you feel that way?</p> <p>20 A. No. Frankly, it was important to me 21 to build rapport with my boss. And that was 22 important to Gary at that point. And I did want to 23 have a better working relationship with my direct 24 superior.</p> <p>25 Q. You still thought he was incompetent?</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. Okay. Do you recall calling the cab 2 driver a motherfucker?</p> <p>3 A. It's possible.</p> <p>4 Q. But you don't recall Gary saying, 5 don't do that again?</p> <p>6 A. Not at all.</p> <p>7 Q. Do you recall telling Gary in 8 September 2014 that you enjoyed working with him, 9 that you had him all wrong and that you had thought 10 he was brought in to fire you?</p> <p>11 A. That conversation could have taken 12 place, yes.</p> <p>13 Q. So let's break it into chunks. 14 Do you recall telling Gary, I thought 15 you were being brought in to fire me?</p> <p>16 A. Yes.</p> <p>17 Q. Why do you think that?</p> <p>18 A. Because I've had two corrective 19 actions against me against Sam -- from Sam Conaway, 20 and it was clear to people throughout the company 21 that Gary was Sam's, quote/unquote, boy that he put 22 into the spot. And so I felt -- I felt initially 23 threatened to have one of Sam's own there, 24 especially after being with the company for 14 years 25 prior to that without a black mark on my record. I</p>	<p style="text-align: right;">Page 173</p> <p>1 A. And his incompetence was clear to a 2 multitude of people throughout the organization.</p> <p>3 Q. Okay. Do you recall telling Gary 4 Lickovitch in September 2014 that you have so much 5 stuff on so many people that a lot of people would 6 fall if you were wronged by the company?</p> <p>7 A. I don't recall saying that, no.</p> <p>8 Q. Is it possible?</p> <p>9 A. It's possible.</p> <p>10 Q. You don't deny saying that?</p> <p>11 A. I don't know why I would say that. I 12 don't deny it because I don't recall it, but I don't 13 know what would benefit me to say that to a 14 superior.</p> <p>15 Q. Well, it's extortion. Right?</p> <p>16 MR. MARTIN: Objection. That's 17 argumentative.</p> <p>18 BY MR. KNAPP:</p> <p>19 Q. It's telling your supervisor, you 20 know, I know there's two strikes against me. I 21 think I might be -- you were brought in to fire me, 22 but if you do, I've got the goods on some people and 23 I'll make them fall too. Right?</p> <p>24 MR. MARTIN: It's argumentative.</p> <p>25 BY MR. KNAPP:</p>

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<p style="text-align: right;">Page 174</p> <p>1 Q. That would be the purpose of saying 2 it, to protect yourself? 3 MR. MARTIN: You're saying it is. 4 It's your testimony, it's not anybody else's. 5 BY MR. KNAPP: 6 Q. That would be the purpose of saying 7 it. Right? 8 A. Again, I don't recall saying it. I 9 think I answered the question. But I wouldn't know 10 a purpose of saying that to a superior. 11 Q. That would be the purpose, would it 12 not? 13 MR. MARTIN: He's already answered 14 the question. He doesn't know the purpose. You're 15 arguing. 16 THE WITNESS: I don't know the 17 purpose of that. 18 BY MR. KNAPP: 19 Q. You don't -- your testimony is you 20 don't understand what that might mean, if you said 21 that to your boss, if you fire me, I've got the 22 goods on people? 23 A. I understand the statement that you 24 made, what it may mean. I don't recall saying it, 25 and I would find it hard to believe that I said that</p>	<p style="text-align: right;">Page 176</p> <p>1 A. I couldn't get it. I had deleted it. 2 Q. Do you recall -- do you recall 3 telling Michele DeCoux that you had texts and tape 4 recordings that you could use against people? 5 A. I don't remember saying tape 6 recordings. I remember in the context of me 7 explaining to compliance that I felt that senior 8 leadership was being inappropriate with me, that I 9 had texts from Sam Conaway asking for girls' phone 10 numbers. 11 Q. Why not just give that to HR? 12 A. Because I didn't have the texts 13 anymore, so the only way I thought they could get 14 them is internally because my phone belonged to the 15 company. 16 Q. So why did you repeatedly threaten 17 that you had this stuff? 18 A. It wasn't a threat. We had discussed 19 that I felt Sam was inappropriate with me and had 20 discussed that there was this evidence out there. 21 Q. Why didn't you give it to them? 22 A. Because I just explained to you, I 23 didn't have it any longer. It wasn't on my phone. 24 Q. If you knew you didn't have it, why 25 did you continue to threaten that you were going</p>
<p style="text-align: right;">Page 175</p> <p>1 to Gary Lickovitch. 2 Q. Do you recall ever saying that to 3 anybody? 4 A. No. No, I don't recall saying that 5 to anybody. 6 Q. You deny it? 7 A. I don't recall saying it to anyone, 8 and I don't know what context I would -- I would use 9 those words. 10 Q. Do you recall telling Lynn Prust that 11 you had text and photos that you were going to use 12 against the company? 13 A. I -- yeah. Lynn Prust and I 14 discussed that Sam was inappropriate in text 15 messages. 16 Q. Right. 17 A. And I wanted to make her aware that I 18 felt the senior leadership was being inappropriate 19 with their subordinates. 20 Q. You were threatening to disclose 21 those, weren't you? 22 A. What I was doing is threatening to 23 give the evidence to Lynn Prust to prove that Sam 24 Conaway was being inappropriate with me. 25 Q. But you didn't give it to her?</p>	<p style="text-align: right;">Page 177</p> <p>1 to -- 2 A. Because I assume that the company 3 could use their own internal phones to go find the 4 records if they were interested in pursuing it. 5 Q. So -- all right. Do you recall 6 showing Gary Lickovitch pictures of naked women? 7 A. No. 8 Q. Do you deny that you did that? 9 A. I do. I don't recall that at all. 10 Who were the naked women that I showed him? 11 Q. So during this time period, you 12 started looking for other work. Right? 13 A. Not at this point, no. 14 Q. No? 15 A. I don't believe so. 16 Q. You started putting your resume 17 together in the fall of 2014? 18 A. I don't recall when the time frame 19 is. Again, dates, I'm not positive on. 20 - - - 21 (Deposition Exhibit No. Simons-18, 22 E-mail dated 10/14/2014, Bates stamped 23 BSC00001654 through BSC00001659, was 24 marked for identification.) 25 - - -</p>

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<p style="text-align: right;">Page 178</p> <p>1 THE WITNESS: I do recall this now.</p> <p>2 BY MR. KNAPP:</p> <p>3 Q. Showing you what's been marked as</p> <p>4 Exhibit 18.</p> <p>5 This is an e-mail from you to Anna</p> <p>6 Knighten. Correct?</p> <p>7 A. Okay, yes.</p> <p>8 Q. Dated October 14, 2014 enclosing</p> <p>9 your -- a draft resume?</p> <p>10 A. Yes.</p> <p>11 Q. Why were you preparing a resume in</p> <p>12 October 2014?</p> <p>13 A. I believe I felt it prudent to update</p> <p>14 my resume. I hadn't done that since I started with</p> <p>15 Boston Scientific.</p> <p>16 Q. And why did you feel it prudent to</p> <p>17 update your resume?</p> <p>18 A. I believe a lot of people continue to</p> <p>19 have an updated resume when they change jobs and</p> <p>20 have new jobs. I don't recall my mindset of why I</p> <p>21 did it. Two corrective actions is concerning.</p> <p>22 Q. Did you circulate your resume and</p> <p>23 start looking for jobs in late 2014?</p> <p>24 A. I don't believe ever sending my</p> <p>25 resume out in that time frame, but I don't remember</p>	<p style="text-align: right;">Page 180</p> <p>1 Trivascular.</p> <p>2 Q. What is Trivascular?</p> <p>3 A. It's a medical device company that</p> <p>4 sells aortic stent graphs.</p> <p>5 Q. And you e-mailed him and said, among</p> <p>6 other things, "I have attached the resume for you to</p> <p>7 pass on if you see an opportunity." Right?</p> <p>8 A. Yes.</p> <p>9 Q. Why did you send him a resume?</p> <p>10 A. I had met him in New York City and</p> <p>11 just wanted to explore other opportunities that may</p> <p>12 be, you know, within the field.</p> <p>13 Q. Why?</p> <p>14 A. I think it's wise to always see what</p> <p>15 else is out there and if there's an interesting new</p> <p>16 opportunity. I obviously didn't make any move to</p> <p>17 leave or go to them, but I would always explore</p> <p>18 opportunities.</p> <p>19 Q. So is it because in part you felt</p> <p>20 that your job was on the line and you're being</p> <p>21 managed by an incompetent person who you didn't</p> <p>22 respect and who you didn't think liked you? Is that</p> <p>23 part of the reason?</p> <p>24 A. Yes.</p> <p>25 Q. So you have a sister named Kathleen.</p>
<p style="text-align: right;">Page 179</p> <p>1 the dates that I did.</p> <p>2 Q. Is it possible you did?</p> <p>3 A. Yes, it's possible.</p> <p>4 Q. Who's Chris Leach?</p> <p>5 A. I don't recall.</p> <p>6 - - -</p> <p>7 (Deposition Exhibit No. Simons-19,</p> <p>8 E-mail chain, top one dated 11/29/2014,</p> <p>9 Bates stamped BSC00001674 through</p> <p>10 BSC00001679, was marked for</p> <p>11 identification.)</p> <p>12 - - -</p> <p>13 BY MR. KNAPP:</p> <p>14 Q. Showing you what's been marked as</p> <p>15 Exhibit 19.</p> <p>16 This is an e-mail from you to Chris</p> <p>17 Leach at trivascular.com?</p> <p>18 A. Chris Leach is -- now I recall.</p> <p>19 MR. MARTIN: Wait until there's a</p> <p>20 question.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. KNAPP:</p> <p>23 Q. You can go ahead. Who is Chris</p> <p>24 Leach?</p> <p>25 A. I believe he's a manager at</p>	<p style="text-align: right;">Page 181</p> <p>1 Correct?</p> <p>2 A. Yes.</p> <p>3 Q. And where does she live?</p> <p>4 A. She lives in Cherry Hill, New Jersey.</p> <p>5 Q. Okay. And what does she do?</p> <p>6 A. She is a sales rep for Marriott.</p> <p>7 Q. Okay. And how many siblings do you</p> <p>8 have?</p> <p>9 A. I have three sisters and two</p> <p>10 brothers.</p> <p>11 Q. Okay. And do they all live in --</p> <p>12 A. They all live in the South Jersey</p> <p>13 area: Medford, Cherry Hill, Haddon Heights.</p> <p>14 Q. Do you remember that your sister</p> <p>15 started -- Kathleen started pressing you to go get</p> <p>16 treatment for alcoholism in the fall of 2014?</p> <p>17 A. Yes.</p> <p>18 Q. Do you believe that was warranted?</p> <p>19 A. Reflecting back, yes.</p> <p>20 Q. Why?</p> <p>21 A. Because clearly people outside were</p> <p>22 starting to see changes in me and had concerns about</p> <p>23 my drinking. While she wasn't around on a daily</p> <p>24 basis, she had concerns.</p> <p>25 Q. And how often do you see her, like</p>

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<p style="text-align: right;">Page 182</p> <p>1 how would she have even known?</p> <p>2 A. My sister Kathleen is in -- still in</p> <p>3 contact with my ex-wife at times.</p> <p>4 Q. Lacia?</p> <p>5 A. Yes.</p> <p>6 - - -</p> <p>7 (Deposition Exhibit No. Simons-20,</p> <p>8 E-mail chain, top one dated 9/12/2014,</p> <p>9 Bates stamped BSC00001582 and BSC00001583,</p> <p>10 was marked for identification.)</p> <p>11 - - -</p> <p>12 BY MR. KNAPP:</p> <p>13 Q. Showing you what's been marked as</p> <p>14 Exhibit 20, Mr. Simons, this is an e-mail your</p> <p>15 sister sent you in mid September 2014. Right?</p> <p>16 A. Yes.</p> <p>17 Q. And would you agree that in this</p> <p>18 she's kind of imploring you to go seek treatment?</p> <p>19 A. Yes.</p> <p>20 Q. And if you go look at the second</p> <p>21 paragraph of her e-mail which is on page 1, it</p> <p>22 begins with "The other component is your job."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. "I strongly think you should skip the</p>	<p style="text-align: right;">Page 184</p> <p>1 into treatment and get caught drinking during work</p> <p>2 hours, or Joe or Tom tell" anybody "about the</p> <p>3 incident that happened, you can be fired</p> <p>4 immediately." Right?</p> <p>5 A. Correct.</p> <p>6 Q. Did you agree with her?</p> <p>7 A. I did agree with that, yes.</p> <p>8 Q. What's the incident she's referring</p> <p>9 to here with respect to Joe and Tom?</p> <p>10 A. I don't recall. I think, maybe it's</p> <p>11 possibly when Tom had come to my house and, you</p> <p>12 know, I had been arrested, but I'm not exactly</p> <p>13 positive what she's speaking of. Kathleen and I had</p> <p>14 had many discussions about...</p> <p>15 Q. Both Joe and Tom were aware that you</p> <p>16 had a problem with alcohol. Right?</p> <p>17 A. I believe so.</p> <p>18 Q. And they both knew that you went into</p> <p>19 treatment in March because you told them. Right?</p> <p>20 A. That's correct.</p> <p>21 Q. Your sister goes on to say, "If you</p> <p>22 seek treatment before they find out and go under</p> <p>23 FMLA, they can't do anything to you." Right?</p> <p>24 A. That was her understanding.</p> <p>25 Q. And you agreed with that at the time.</p>
<p style="text-align: right;">Page 183</p> <p>1 meeting in DC. You could check into this place by</p> <p>2 Monday and I could take care of your company and</p> <p>3 letting them know where you are et cetera."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. What was the meeting in DC?</p> <p>7 A. There was -- I believe it was -- I'm</p> <p>8 not positive, but I believe it was TCT, which is a</p> <p>9 cardiology meeting which I did attend.</p> <p>10 Q. Okay. And you didn't go into</p> <p>11 treatment as she requested at that point. Right?</p> <p>12 A. No, sir.</p> <p>13 Q. And she goes on to say, "I would get</p> <p>14 a note from your doctor and you can get FMLA for 12</p> <p>15 weeks. You can't be fired!!"</p> <p>16 Do you recall that?</p> <p>17 A. Yes.</p> <p>18 Q. Did you believe that to be the case</p> <p>19 after she told you, that if you seek FMLA, they</p> <p>20 can't fire you?</p> <p>21 A. I believe that that's what the</p> <p>22 understanding of the law is, but I felt still at</p> <p>23 this point concerned about exposing my disease to</p> <p>24 the company superiors.</p> <p>25 Q. She goes on to say, "If you do not go</p>	<p style="text-align: right;">Page 185</p> <p>1 Right?</p> <p>2 A. Yes. I believe that to be true.</p> <p>3 Q. Have you talked to your sister or Joe</p> <p>4 or Tom about what this incident is that they're</p> <p>5 referring to here?</p> <p>6 A. No.</p> <p>7 Q. Or she's referring to?</p> <p>8 A. No.</p> <p>9 Q. Have you talked to your sister at all</p> <p>10 about this case?</p> <p>11 A. No. I mean, way back, a long time</p> <p>12 ago when I had initially been terminated, we had a</p> <p>13 discussion about it; but no, I haven't talked about</p> <p>14 specific details in quite a while.</p> <p>15 Q. And tell me about the conversation</p> <p>16 you had with her when you were terminated.</p> <p>17 A. I had -- I had visited her home and I</p> <p>18 think she saw how upset I was. And I think there</p> <p>19 was surprise on all of our parts that I had made the</p> <p>20 effort to voluntarily go into rehabilitation for the</p> <p>21 disease of alcoholism and the company still let me</p> <p>22 go after completing that treatment and getting on a</p> <p>23 program for aftercare.</p> <p>24 Q. So do you think -- well, all right.</p> <p>25 MR. MARTIN: It's almost quarter to</p>

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<p style="text-align: right;">Page 186</p> <p>1 1:00. Let me know when it's a good time to take a 2 break. 3 MR. KNAPP: Let's go through this 4 last exhibit and then we'll break for lunch. Sorry 5 about that. 6 - - - 7 (Deposition Exhibit No. Simons-21, 8 E-mail chain, top one dated 9/15/2014, 9 Bates stamped BSC00001556 and BSC00001557, 10 was marked for identification.) 11 - - - 12 BY MR. KNAPP: 13 Q. So Mr. Simons, showing you 14 Exhibit 21, this is another e-mail from your sister 15 to you. And this is dated September 15, 2015 -- 14. 16 Correct? 17 A. Yes. 18 Q. Do you remember getting this e-mail? 19 A. Yes. 20 Q. And she's -- is it correct that she 21 was unhappy you didn't take her advice to go to 22 treatment and this is like she escalated it up a 23 notch to try to convince you to go? 24 A. That was my take on it, yes. 25 THE VIDEOGRAPHER: Sir, you're</p>	<p style="text-align: right;">Page 188</p> <p>1 Q. Exaggeration like Lacia. Correct? 2 A. Exaggeration like taking Lacia's side 3 of stories, yes. 4 Q. And exaggeration like Gary and Sam. 5 Right? 6 A. Correct. 7 Q. And your counselor at the treatment 8 center in California. Correct? 9 A. I think yes. 10 Q. And the police officers in Wyckoff, 11 New Jersey. Correct? 12 A. Correct. 13 Q. She says, you told me about how 14 you've been caught by your subordinate workers. 15 What is that referring to? 16 A. I think -- I'm not exactly sure of 17 the incidence she's referring to, but I think, you 18 know, Tom had come to my house when there was an 19 incident. 20 Q. How many other -- he didn't catch you 21 drinking that time. Right? 22 A. But he knew that was probably 23 involved in the incident. 24 Q. And that was two years earlier? 25 A. I believe so, yeah.</p>
<p style="text-align: right;">Page 187</p> <p>1 muffling your microphone. 2 THE WITNESS: Oh, sorry. Yes. 3 BY MR. KNAPP: 4 Q. She writes here, "You tell me about 5 how you need help and have the shakes, drink in the 6 morning, have been caught by your subordinate 7 workers et cetera and that you cannot quit this 8 addiction by yourself." Right? 9 A. That's what she wrote. 10 Q. Is it true that you had told her as 11 of September '14 you were drinking in the morning? 12 A. I don't recall saying that to her. 13 Q. Do you deny it? 14 A. I don't recall saying it to her. I 15 don't deny it. I think that was her perception of 16 what was happening. 17 Q. Well, she's not just making it up. 18 Right? 19 A. I don't know if she's making it up or 20 not. I don't recall saying that to her. 21 Q. Is your sister prone to lying? 22 A. My sister is prone to exaggeration. 23 Q. Okay. 24 A. And engages in gossip quite 25 frequently.</p>	<p style="text-align: right;">Page 189</p> <p>1 Q. What other -- on what other occasions 2 were you caught drinking by your subordinates? 3 A. I don't recall. 4 Q. She says, you come down here and drop 5 the girls off with me and go out partying. 6 Is that true? Did you do that? 7 A. That was going to my 20th high school 8 reunion that we had already planned that she would 9 watch my daughters and I would go to visit with 10 friends that I hadn't seen in years. 11 Q. That's just referring to one incident 12 when -- 13 A. Yes. 14 Q. -- that was already understood. 15 She said, "You are crying and sound 16 desperate when I speak to you." 17 Was that true? 18 A. It happened one time. 19 Q. And then she goes on to say, "What 20 I'm not okay with is your lying. Are you even 21 aware" that you told Karen -- who is Karen? 22 A. My sister. 23 Q. -- that "Lacia called the cops on you 24 and came to your door with the cops to get the girls 25 on Friday?"</p>

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<p style="text-align: right;">Page 190</p> <p>1 Do you recall telling your sister 2 Karen that? 3 A. I don't recall telling her that. 4 Q. Is it possible you did? 5 A. Yes. 6 Q. And would that have been something 7 you might have said when you were drunk and it just 8 wasn't true? 9 A. It's possible. 10 Q. She goes on, says, "No one comes to 11 see you or calls because you are so lost to 12 addiction, no one wants any parts of it or your dark 13 life." 14 Did you see -- do you remember 15 reading that? 16 A. I remember reading it. 17 Q. Is that true? 18 A. It's her opinion. 19 Q. And your response was, you wrote, 20 "Wow. You know it all I guess." Right? 21 A. That is my response. 22 Q. So you're -- essentially you were 23 rejecting her -- what she was telling you. Right? 24 A. Yes. 25 Q. You didn't think you needed treatment</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. Okay. To the extent you've sought 2 employment since your last day of work at Boston 3 Scientific, have you been offered any jobs that you 4 did not accept? 5 A. No. 6 Q. And with respect to social media, are 7 you on Facebook, Twitter, any of that stuff? 8 A. I'm on LinkedIn. 9 Q. Okay. 10 A. And recently I joined Facebook, but 11 for no real reason. I don't have -- I have one 12 friend on there. And I don't plan to pursue it. 13 Q. And as far as e-mails that you've had 14 in the last, let's say, 3 years, what e-mail 15 addresses other than your Boston Scientific e-mail 16 address? 17 A. Now I have one e-mail, 18 mike.simons516@gmail.com. 19 Q. And do you have an e-mail address in 20 your new employment that's specifically Control 21 Medical? 22 A. That is -- no, I don't. 23 Q. With respect to -- we've talked 24 earlier about Anna Knighten alleging -- telling the 25 police at one point that you dragged her by her hair</p>
<p style="text-align: right;">Page 191</p> <p>1 at that point? 2 A. I was concerned about seeking out 3 treatment at that point. 4 Q. Did you ask Tom and Joe not to say 5 anything about what had happened? 6 A. No. 7 Q. You just knew they wouldn't? 8 A. I just didn't expect it to get to the 9 point where they would be asked. 10 MR. KNAPP: Okay. All right. Let's 11 take a break. 12 THE VIDEOGRAPHER: This concludes 13 Disk 2 of the deposition. The time is 12:47 p.m. 14 We are off the record. 15 - - - 16 (A luncheon recess was taken from 17 12:47 p.m. to 1:22 p.m.) 18 - - - 19 THE VIDEOGRAPHER: The time is 1:22 20 p.m. We are on the record. 21 BY MR. KNAPP: 22 Q. Mr. Simons, we're back from lunch and 23 continuing your deposition. 24 You realize you're still under oath? 25 A. Yes, sir.</p>	<p style="text-align: right;">Page 193</p> <p>1 down the hall in that one domestic dispute incident, 2 do you deny that you did that? 3 A. Yes. 4 Q. Do you recall telling any of your 5 subordinate employees or co-workers about that 6 incident or allegation? 7 A. I don't recall talking to them about 8 it. 9 - - - 10 (Deposition Exhibit No. Simons-22, 11 E-mail dated 12/1/2014, Bates stamped 12 BSC00001670 and BSC00001671, was marked 13 for identification.) 14 - - - 15 BY MR. KNAPP: 16 Q. So we're now in December 2014. 17 Do you recall in late November that 18 you had a call with Gary Lickovitch in which he 19 raised some concerns about your judgment? 20 A. I do recall. 21 Q. And that was on a Friday that you had 22 the discussion? 23 A. I believe so. 24 Q. And tell me what you recall about the 25 phone conversation. Well, let me back up.</p>

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<p style="text-align: right;">Page 194</p> <p>1 Was it a phone conversation?</p> <p>2 A. I don't recall. I remember having a</p> <p>3 conversation that I'm looking at in front of me.</p> <p>4 Q. And he followed up that conversation</p> <p>5 in writing with this December 1st e-mail?</p> <p>6 A. I believe the e-mail came, yes.</p> <p>7 Q. Tell me what you recall without</p> <p>8 looking at this document of that conversation.</p> <p>9 A. So what I recall from this document</p> <p>10 is that again, because Gary Lickovitch would not let</p> <p>11 me explain my position on any of this, that I was</p> <p>12 not able to clarify the incorrect assumptions that</p> <p>13 he made from this.</p> <p>14 Q. We'll talk about that in a minute.</p> <p>15 Do you recall raising any issues with</p> <p>16 Gary in that conversation?</p> <p>17 A. I did. I recall that Gary's behavior</p> <p>18 was not -- not appropriate for a senior leader at</p> <p>19 Boston Scientific in regards to other employees.</p> <p>20 Q. And did you get specific with him in</p> <p>21 the call or the conversation?</p> <p>22 A. In the call I did not get specific</p> <p>23 with him.</p> <p>24 Q. Okay.</p> <p>25 A. Not to my recollection. But I did</p>	<p style="text-align: right;">Page 196</p> <p>1 A. I believe it was after, if...</p> <p>2 Q. All right. So I take it that after</p> <p>3 this conversation you had with Gary in late</p> <p>4 November, you thought that was kind of the end of</p> <p>5 it, right, and then you were surprised that he sent</p> <p>6 you an e-mail documenting it?</p> <p>7 A. Exactly.</p> <p>8 Q. And you were unhappy with him for</p> <p>9 documenting his concerns. Right?</p> <p>10 A. Correct.</p> <p>11 Q. And why did that make you mad?</p> <p>12 A. Because when you read the e-mail --</p> <p>13 first of all, e-mails at Boston Scientific are</p> <p>14 permanent documents. And secondly, I did not once</p> <p>15 again agree with his perception of what happened in</p> <p>16 the e-mail, so had little chance to rebut his</p> <p>17 thoughts.</p> <p>18 Q. So, and to be specific then, the two</p> <p>19 issues that he raised with you in the conversation</p> <p>20 late November and then documented in this e-mail,</p> <p>21 the first was with respect to a welcome reception</p> <p>22 for Arial. Correct?</p> <p>23 A. That's correct.</p> <p>24 Q. And what is Arial?</p> <p>25 A. She was a clinical specialist on my</p>
<p style="text-align: right;">Page 195</p> <p>1 write him a subsequent e-mail.</p> <p>2 Q. Okay. So is it correct that he had a</p> <p>3 meeting with you, he raised what he thought was</p> <p>4 inappropriate behavior on your part, and you</p> <p>5 responded saying, look in the mirror basically?</p> <p>6 A. Yes. I mean, not exactly that, those</p> <p>7 words, but yes.</p> <p>8 Q. Right.</p> <p>9 A. I responded saying, first -- my first</p> <p>10 response was, can you let me explain the situation.</p> <p>11 And he said something to the effect of, I don't want</p> <p>12 to hear it. It doesn't matter what your explanation</p> <p>13 is.</p> <p>14 Q. And then that was the first thing.</p> <p>15 Then what's the second thing?</p> <p>16 A. Second, I explained the situation to</p> <p>17 Sam Conaway at a meeting at a hotel in New York</p> <p>18 City. And he agreed that he completely understood,</p> <p>19 that it was a misunderstanding.</p> <p>20 Q. When was that meeting?</p> <p>21 A. Sometime after Gary and I had had a</p> <p>22 discussion.</p> <p>23 Q. Was it before or after this e-mail?</p> <p>24 A. I don't recall.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 197</p> <p>1 team and a new employee that we had just hired.</p> <p>2 Q. And Mike -- excuse me, Gary was</p> <p>3 unhappy that you brought Anna to that welcome</p> <p>4 reception. Correct?</p> <p>5 A. He states that here. He was at the</p> <p>6 welcome reception and seemed to be having an</p> <p>7 excellent time and drinking and enjoying himself and</p> <p>8 did not make any comment to me about it until this</p> <p>9 e-mail, about the specific Arial situation.</p> <p>10 Q. And he says, Mike, "you told me that</p> <p>11 you spoke to Ebony and had prior approval from her</p> <p>12 to have significant others at the welcome</p> <p>13 reception." Right?</p> <p>14 A. No. What I told him was I spoke to</p> <p>15 Ebony Travis about having significant others at just</p> <p>16 BSC meetings, where there are no customers, and she</p> <p>17 said that that is allowed according to our code of</p> <p>18 compliance. Then subsequently Gary said, had you</p> <p>19 spoken to Ebony. I said yes because I had</p> <p>20 previously spoken to Ebony Travis about the policy</p> <p>21 of having spouses or significant others at a welcome</p> <p>22 party.</p> <p>23 Then after Gary raised that, I called</p> <p>24 about this specific incident with Ebony. And she</p> <p>25 reinforced her position that we were in fact allowed</p>

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<p style="text-align: right;">Page 198</p> <p>1 to have spouses and significant others.</p> <p>2 Q. And when you first talked to Ebony --</p> <p>3 well, let's back up.</p> <p>4 In the conversation you had with Gary</p> <p>5 on Friday, November 21st, did he say, you told me --</p> <p>6 or did you tell him in that conversation that Ebony</p> <p>7 said I can?</p> <p>8 A. He misunderstood. He asked me had I</p> <p>9 spoken to Ebony, and I said yes.</p> <p>10 Q. And what's Ebony's title again?</p> <p>11 A. She is in the compliance</p> <p>12 department --</p> <p>13 Q. Okay.</p> <p>14 A. -- at Boston Scientific.</p> <p>15 Q. So he out of the blue said, did you</p> <p>16 speak to Ebony about this?</p> <p>17 A. That is correct.</p> <p>18 Q. And you said, as a matter of fact, I</p> <p>19 have?</p> <p>20 A. That's correct.</p> <p>21 Q. And when had you spoken to Ebony</p> <p>22 prior to this November --</p> <p>23 A. Ebony and I had -- I can't recall the</p> <p>24 exact date, but Ebony and I had had discussions</p> <p>25 about when you have BSC functions similar to a</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. Okay. And then the next issues he</p> <p>2 raises is you were to meet with somebody named</p> <p>3 Dmitry after he finished his case either at his</p> <p>4 condo or out for a quick dinner on Wednesday.</p> <p>5 Who is Dmitry?</p> <p>6 A. He is a physician at Columbia</p> <p>7 Presbyterian.</p> <p>8 Q. Okay.</p> <p>9 A. And a friend of Gary's.</p> <p>10 Q. And you asked if you could skip out</p> <p>11 of it so you could spend time with your daughters.</p> <p>12 Correct?</p> <p>13 A. Yes.</p> <p>14 Q. And that's true?</p> <p>15 A. Yes.</p> <p>16 Q. And he said, absolutely. Go ahead?</p> <p>17 A. Correct. But the misunderstanding</p> <p>18 here is that I don't believe that a meeting was set</p> <p>19 with Dmitry. I think there was a phone call in to</p> <p>20 Dmitry and we were waiting to hear back from him.</p> <p>21 I had spent two days with Gary Lickovitch and felt</p> <p>22 that I wanted to go see my family as opposed to an</p> <p>23 impromptu dinner.</p> <p>24 Q. Okay. And you asked to be -- to not</p> <p>25 have to do it?</p>
<p style="text-align: right;">Page 199</p> <p>1 holiday party, are you allowed to have significant</p> <p>2 others there. And the answer was -- from her was</p> <p>3 yes, as long as there's no customers.</p> <p>4 Q. And she -- he in this e-mail, Gary,</p> <p>5 says, "This requires prior written approval from</p> <p>6 senior leadership in which I should be copied."</p> <p>7 Right?</p> <p>8 A. That's what he says.</p> <p>9 Q. "I never received anything."</p> <p>10 And he didn't because you didn't</p> <p>11 understand you had to do that. Right?</p> <p>12 A. I had never heard that was the</p> <p>13 policy. And frankly, Gary knew about this</p> <p>14 get-together long before us going to it and</p> <p>15 welcomingly attended it.</p> <p>16 Q. And he says, "I never received" --</p> <p>17 excuse me.</p> <p>18 When I spoke to Ebony she told me she</p> <p>19 didn't speak to you and in fact, she reiterated that</p> <p>20 there's this senior approval needed. Right?</p> <p>21 A. That's what he states in here.</p> <p>22 Q. Do you claim that he's making that</p> <p>23 up?</p> <p>24 A. I don't claim he's making that up. I</p> <p>25 claim that that's not what Ebony had told me.</p>	<p style="text-align: right;">Page 201</p> <p>1 A. That's correct.</p> <p>2 Q. And he then says how surprised he was</p> <p>3 the next morning to see you and Anna on the elevator</p> <p>4 of the W Hotel at 8:50 a.m. looking as though you</p> <p>5 had just woken up?</p> <p>6 A. That was his claim, yes.</p> <p>7 Q. And had you spent the evening with</p> <p>8 Anna at the W Hotel that evening?</p> <p>9 A. I met Anna later in the evening and</p> <p>10 we stayed at the W because I already had the room</p> <p>11 reserved.</p> <p>12 Q. And is this in downtown New York or</p> <p>13 where is that?</p> <p>14 A. Midtown New York, yes.</p> <p>15 Q. And if you're leaving to spend -- did</p> <p>16 you in fact leave to spend time with your daughters?</p> <p>17 A. I took my daughters to dinner that</p> <p>18 evening.</p> <p>19 Q. Where?</p> <p>20 A. Outside their house. I don't</p> <p>21 remember the restaurant, but I picked my daughters</p> <p>22 up and we went to dinner.</p> <p>23 Q. Okay. Did you use a credit card for</p> <p>24 that dinner?</p> <p>25 A. I don't recall.</p>

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<p style="text-align: right;">Page 202</p> <p>1 Q. Did you pay cash?</p> <p>2 A. I don't recall.</p> <p>3 Q. Okay. You don't recall where you</p> <p>4 took them?</p> <p>5 A. I don't. We've eaten out at</p> <p>6 countless restaurants.</p> <p>7 Q. What's that?</p> <p>8 A. We've eaten out at countless</p> <p>9 restaurants.</p> <p>10 Q. How far of a drive is it from Midtown</p> <p>11 Manhattan to there?</p> <p>12 A. I live about 16 miles outside of New</p> <p>13 York City, so close.</p> <p>14 Q. How far of a drive is that?</p> <p>15 A. How long a drive is that?</p> <p>16 Q. Yeah.</p> <p>17 A. It all depends on traffic, but not</p> <p>18 overwhelmingly long.</p> <p>19 Q. How long?</p> <p>20 A. 40 minutes with traffic.</p> <p>21 Q. With traffic?</p> <p>22 A. Yeah. Without traffic you can get</p> <p>23 there in 20 minutes.</p> <p>24 Q. So you left to -- instead of doing</p> <p>25 dinner, you say take your daughters out to dinner?</p>	<p style="text-align: right;">Page 204</p> <p>1 saw you that morning what had happened?</p> <p>2 A. I tried to, as I previously stated.</p> <p>3 He said he didn't want to hear it.</p> <p>4 Q. You're talking about the meeting on</p> <p>5 November 21st.</p> <p>6 But the morning that he saw you at</p> <p>7 the Hotel W?</p> <p>8 A. No. I simply said to him, I have</p> <p>9 another meeting I need to go to this morning, talk</p> <p>10 to you later.</p> <p>11 Q. And he says you weren't really in any</p> <p>12 shape to be going to a meeting based on how you were</p> <p>13 dressed.</p> <p>14 Do you agree?</p> <p>15 A. I agree. I needed to stop home and</p> <p>16 change into a suit for my meeting, which I was still</p> <p>17 on time for.</p> <p>18 Q. So then you claim that in this</p> <p>19 November 21st conversation you tried to explain</p> <p>20 everything, and he said, I didn't want to hear it?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. And you were angry that you</p> <p>23 got that document --</p> <p>24 A. I was angry, yes, he made a formal</p> <p>25 e-mail about it when not willing to listen to an</p>
<p style="text-align: right;">Page 203</p> <p>1 A. That's correct.</p> <p>2 Q. And then instead of staying at</p> <p>3 home -- were your daughters at your home?</p> <p>4 A. They were at their mother's.</p> <p>5 Q. And where is --</p> <p>6 A. And I dropped them back at their</p> <p>7 mother's house.</p> <p>8 Q. Where does she live?</p> <p>9 A. Very close proximity, 3 miles away</p> <p>10 from me.</p> <p>11 Q. So you picked them up that evening,</p> <p>12 dropped them off, but then went back to Midtown</p> <p>13 Manhattan?</p> <p>14 A. Yes. Anna was still working in</p> <p>15 Midtown Manhattan. She was at a Beeth (ph) meeting,</p> <p>16 which is a peripheral meeting in New York City. I</p> <p>17 still had the room, so I called Anna and said, would</p> <p>18 you like to just stay in the city. We have the</p> <p>19 room.</p> <p>20 Q. Why did you keep the room?</p> <p>21 A. Because I was unsure if Gary was</p> <p>22 going to make me stay for a work dinner. And by the</p> <p>23 time we figured out I wasn't going, it was 5:00 and</p> <p>24 past the time you can cancel the hotel room.</p> <p>25 Q. Okay. Did you explain to him when he</p>	<p style="text-align: right;">Page 205</p> <p>1 explanation.</p> <p>2 Q. Did you send him an e-mail to explain</p> <p>3 it?</p> <p>4 A. I don't believe so.</p> <p>5 Q. Why not?</p> <p>6 A. Because he stated he didn't want to</p> <p>7 hear the explanation.</p> <p>8 - - -</p> <p>9 (Deposition Exhibit No. Simons-23,</p> <p>10 E-mail chain, top one dated 12/4/2014,</p> <p>11 Bates stamped BSC00001665 through</p> <p>12 BSC00001667, was marked for</p> <p>13 identification.)</p> <p>14 - - -</p> <p>15 BY MR. KNAPP:</p> <p>16 Q. So you responded to his e-mail to you</p> <p>17 on Thursday, December 4th at 9:20 in the morning.</p> <p>18 Correct?</p> <p>19 A. Correct.</p> <p>20 Q. In your response you said --</p> <p>21 A. I responded to the conversation.</p> <p>22 Q. What conversation?</p> <p>23 A. The conversation on the 21st.</p> <p>24 Q. So this was -- your e-mail is dated</p> <p>25 Thursday, December 4th --</p>

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<p style="text-align: right;">Page 206</p> <p>1 A. Or our conversation on Monday, I 2 guess it was. 3 Q. And Monday would have been December 4 1st? 5 A. Yes, I believe so. 6 Q. So did you also have a conversation 7 on December 1st that was followed up by this 8 e-mail -- 9 A. I believe so. 10 Q. -- that's Exhibit 22? 11 Okay. All right. You said, "I 12 wanted to follow up on our conversation on Monday. 13 I think it ended well and we reached an agreement... 14 I will certainly follow through on that." 15 What agreement did you reach that you 16 were going to follow through on? 17 A. Gary had a discussion about honesty 18 and being more up front about explanations prior to 19 an event happening. And now I understood, you know, 20 maybe I could have explained better what my plans 21 would have been so he was not shocked to see me that 22 morning. 23 Q. And he says, "At times our talk 24 became heated but that was fine with me." 25 How did it become heated?</p>	<p style="text-align: right;">Page 208</p> <p>1 You know, my first concern was to 2 stop the behavior. 3 Q. Sure. And why did you say, "This 4 e-mail will stay in my files"? 5 A. Because I wanted to reassure him that 6 if the behavior stopped, then I didn't know exactly 7 how to proceed with it. 8 Q. You're saying if you make life 9 difficult for me, I'm going to come forward with 10 this information? 11 A. That's not what I'm saying at all. 12 Q. It sure sounds like it. 13 A. I'm saying I had concern about Gary's 14 actions and I wanted to document it and let him know 15 that it's an important enough concern that I wanted 16 it documented. 17 Q. You never had raised these issues 18 with him previously, had you? 19 A. Yes, we had. 20 Q. When? 21 A. In that discussion that we got heated 22 about. 23 Q. Oh, you did? 24 A. Yes. 25 Q. What did you say?</p>
<p style="text-align: right;">Page 207</p> <p>1 A. Because, again, I was trying to 2 explain to him what happened, he was not letting 3 that happen. And both of us got back and forth 4 where he's telling me to stop trying to explain, and 5 I'm saying, you need to understand what happened. 6 So it got heated. 7 Q. "I just want" -- you go on in this 8 e-mail and say, "I just want to lay out issues that 9 my team has expressed to me and hopefully we have 10 resolved these," we being you and Gary? 11 A. Yes. 12 Q. So why didn't you say, here's my 13 explanation that you wouldn't hear? 14 A. Because he already had told me that 15 he didn't want an explanation. He told me he was 16 uninterested in hearing it. 17 Q. What you said is basically I think 18 you're sexually harassing Jillian Rothwell, you 19 acted inappropriate with Gary, but this e-mail and 20 my concerns will stay between us? 21 A. I essentially had consulted an 22 ex-senior leader at Boston Scientific on how to 23 handle a situation like this. And his advice at the 24 time was make sure you document exactly what you're 25 saying.</p>	<p style="text-align: right;">Page 209</p> <p>1 A. I told him that members of the 2 team -- I don't know the exact words, but members of 3 the team were raising concerns about his behavior 4 when he visits New York City. 5 Q. Okay. But you didn't get into 6 specifics? 7 A. I don't recall, but I don't think we 8 got into actual specifics. 9 Q. So it sure sounds like you're trying 10 to threaten him. Right? 11 MR. MARTIN: Objection. 12 BY MR. KNAPP: 13 Q. You're saying, I'm going to come 14 forward with this and I'll keep this in my files, 15 but as long as we continue to have a strong working 16 relationship, Gary, we'll keep this between us? 17 MR. MARTIN: You're arguing with the 18 witness. He's already answered that question. 19 You can answer. 20 BY MR. KNAPP: 21 Q. That's what you're saying, isn't it? 22 MR. MARTIN: It's argumentative. 23 You can answer if it's any different 24 than your last answer. 25 THE WITNESS: No, it's not. I've</p>

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<p style="text-align: right;">Page 210</p> <p>1 answered the question.</p> <p>2 BY MR. KNAPP:</p> <p>3 Q. How did you answer it?</p> <p>4 A. That I thought it was important to</p> <p>5 stop Gary Lickovitch from this behavior and</p> <p>6 important enough to write an e-mail to clearly lay</p> <p>7 out what the behavior is. And by my meaning a</p> <p>8 strong working relationship, that means Gary acts</p> <p>9 appropriately when he's dealing with my</p> <p>10 representatives.</p> <p>11 Q. Why didn't you go to HR with any of</p> <p>12 this?</p> <p>13 A. I'm not certain that I wouldn't have</p> <p>14 if -- but momentarily after I sent this e-mail, Gary</p> <p>15 had elevated it to HR. So the point became moot.</p> <p>16 Q. He kind of called your bluff, didn't</p> <p>17 he?</p> <p>18 A. No. I think he probably was</p> <p>19 concerned about it and he went to HR. And at that</p> <p>20 point, we're in the HR's hands.</p> <p>21 Q. You didn't report it to HR, though.</p> <p>22 Right? Gary did?</p> <p>23 A. Gary elevated it.</p> <p>24 Q. Right. Gary reported it to HR.</p> <p>25 Correct?</p>	<p style="text-align: right;">Page 212</p> <p>1 was all kind of lumped together in one conversation.</p> <p>2 Q. How long before?</p> <p>3 A. The final straw being, we were at a</p> <p>4 work dinner, Gary, Jillian and I. And Gary asked</p> <p>5 Jillian to come back to the hotel in New York City</p> <p>6 when she lives in New York, upstate.</p> <p>7 Q. Where does she live in upstate New</p> <p>8 York?</p> <p>9 A. I don't exactly remember the town,</p> <p>10 but I know it was above New York City. And Gary</p> <p>11 said, why don't you just stay at the W with me. And</p> <p>12 she said that was the final straw that she talked</p> <p>13 about it.</p> <p>14 Q. When was that dinner?</p> <p>15 A. I don't recall the date.</p> <p>16 Q. Was it in October?</p> <p>17 A. It was just prior to this.</p> <p>18 Q. Like days?</p> <p>19 A. I believe so. Days or a week, yeah.</p> <p>20 I mean, it was -- it was shortly before this.</p> <p>21 Q. And when did Tom Garrett express</p> <p>22 concern to you that he was dragging him around to</p> <p>23 meet girls?</p> <p>24 A. In the October time frame. Gary kept</p> <p>25 coming to New York and was spending nights out with</p>
<p style="text-align: right;">Page 211</p> <p>1 A. That's correct.</p> <p>2 Q. Not you?</p> <p>3 A. That's correct.</p> <p>4 Q. And if it says to the contrary in</p> <p>5 your Complaint, that would be wrong. Correct?</p> <p>6 A. I spoke to HR about it, but Gary is</p> <p>7 the one that elevated the e-mail.</p> <p>8 Q. Did you observe personally him acting</p> <p>9 inappropriately with Jillian?</p> <p>10 A. Yes.</p> <p>11 Q. Did Jillian ask you to raise</p> <p>12 concerns?</p> <p>13 A. She came to me and said, Gary makes</p> <p>14 me feel uncomfortable.</p> <p>15 Q. Okay.</p> <p>16 A. So at that point, I said, how so. We</p> <p>17 had a discussion about it. And it was multiple</p> <p>18 situations that she felt uncomfortable around Gary,</p> <p>19 felt she was singled out as a female representative,</p> <p>20 that Gary was giving her more attention than other</p> <p>21 people and inappropriately doing things that made</p> <p>22 her feel uncomfortable.</p> <p>23 Q. And when did she have these</p> <p>24 conversations with you? When did this start?</p> <p>25 A. I don't -- not long before this. It</p>	<p style="text-align: right;">Page 213</p> <p>1 Tom Garrett.</p> <p>2 Q. And why didn't you report that?</p> <p>3 A. I did report it right here.</p> <p>4 Q. Why didn't you report it earlier?</p> <p>5 A. It was all in a short time frame</p> <p>6 where I was meeting with them, gathering</p> <p>7 information.</p> <p>8 Q. Who was the executive who told you to</p> <p>9 document?</p> <p>10 A. I spoke to a mentor of mine, Paul</p> <p>11 Reilly.</p> <p>12 Q. Who?</p> <p>13 A. Paul Reilly.</p> <p>14 Q. Your former boss?</p> <p>15 A. I didn't explain the situation to</p> <p>16 him. I simply explained that I -- that there was a</p> <p>17 situation with my superior and complaints made</p> <p>18 against him by my representatives.</p> <p>19 Q. When did you have this discussion</p> <p>20 with Paul?</p> <p>21 A. Just prior to this e-mail.</p> <p>22 Q. What did Paul tell you, document it?</p> <p>23 A. He said it's very important that you</p> <p>24 document these things.</p> <p>25 Q. Did he tell you to confront him?</p>

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<p style="text-align: right;">Page 214</p> <p>1 A. He did.</p> <p>2 Q. Where does Paul work now?</p> <p>3 A. He's the CEO of ActiveRx.</p> <p>4 Q. And where is that?</p> <p>5 A. ActiveRx, I believe -- he's in</p> <p>6 Massachusetts, but I'm not sure where the</p> <p>7 headquarters are.</p> <p>8 Q. In Boston or --</p> <p>9 A. Right outside. A suburb.</p> <p>10 Q. So you get a call after Gary reports</p> <p>11 it to HR from Michele DeCoux?</p> <p>12 A. Correct.</p> <p>13 Q. And who is Michele DeCoux?</p> <p>14 A. She is in charge of HR of</p> <p>15 interventional cardiology.</p> <p>16 Q. And where is she located?</p> <p>17 A. Minneapolis or Maple Grove,</p> <p>18 Minnesota.</p> <p>19 - - -</p> <p>20 (Deposition Exhibit No. Simons-24,</p> <p>21 Handwritten notes dated 12-9-14, Bates</p> <p>22 stamped BSC00000748 through BSC00000763,</p> <p>23 was marked for identification.)</p> <p>24 - - -</p> <p>25 BY MR. KNAPP:</p>	<p style="text-align: right;">Page 216</p> <p>1 Q. You don't think a reasonable person</p> <p>2 would perceive it to be that?</p> <p>3 A. No. A reasonable person would</p> <p>4 perceive it that they've done wrong and offended</p> <p>5 some of the people that work for them.</p> <p>6 Q. So you end up talking to Michele</p> <p>7 DeCoux, it looks like the first time is on December</p> <p>8 9th.</p> <p>9 Do you recall that?</p> <p>10 A. Again, dates I'm not great with, but</p> <p>11 I see what you've put in front of me says December</p> <p>12 9th.</p> <p>13 Q. Read the second paragraph here. It</p> <p>14 says, "Mike heard through the grapevine that Jillian</p> <p>15 was asked by her," Gary, "to stay at the W. Mike</p> <p>16 has not had a conversation with her."</p> <p>17 Do you see that?</p> <p>18 MR. MARTIN: We have -- I object.</p> <p>19 First of all, we have Simons-24, which is</p> <p>20 handwritten notes from someone that's not identified</p> <p>21 by anyone and not signed by anyone. So to the</p> <p>22 extent that you're calling these notes from Michele</p> <p>23 DeCoux, I don't have any idea.</p> <p>24 MR. KNAPP: Excuse me. I'll</p> <p>25 represent that these are Michele DeCoux's notes.</p>
<p style="text-align: right;">Page 215</p> <p>1 Q. Going back to the e-mail you sent</p> <p>2 Gary, do you understand how it could have been</p> <p>3 perceived as you threatening to go public with</p> <p>4 concerns unless he continues to maintain a strong</p> <p>5 working relationship with you?</p> <p>6 A. That was not my intention when I</p> <p>7 wrote it. It was to bring to his attention his</p> <p>8 inappropriate behavior and have it stop.</p> <p>9 Q. Can you understand how it could be</p> <p>10 perceived that way, the way you wrote it?</p> <p>11 MR. MARTIN: I object. His opinion</p> <p>12 on that is irrelevant.</p> <p>13 You can answer it if you can.</p> <p>14 THE WITNESS: I don't see how that</p> <p>15 would be the focus of the e-mail. I think his focus</p> <p>16 should have been I'm doing things wrong and I need</p> <p>17 to change.</p> <p>18 BY MR. KNAPP:</p> <p>19 Q. You can't possibly understand how it</p> <p>20 could be perceived as you threatening to go public?</p> <p>21 A. I can't speak to how Gary perceived</p> <p>22 anything.</p> <p>23 Q. I'm not asking you to guess how Gary</p> <p>24 perceived it.</p> <p>25 A. I don't think that's --</p>	<p style="text-align: right;">Page 217</p> <p>1 MR. MARTIN: Okay.</p> <p>2 BY MR. KNAPP:</p> <p>3 Q. Have you reviewed these notes before</p> <p>4 today's deposition?</p> <p>5 A. I have not, no.</p> <p>6 Q. Did you tell Michele DeCoux that you</p> <p>7 had not actually had a conversation with Jillian</p> <p>8 about any of this?</p> <p>9 A. No.</p> <p>10 Q. Did you tell Michele DeCoux that you</p> <p>11 heard through the grapevine?</p> <p>12 A. No. Because I was standing right</p> <p>13 next to him when he did it.</p> <p>14 Q. So for Michele to have written that</p> <p>15 is just one more example of somebody miswriting what</p> <p>16 you told them?</p> <p>17 A. I can't speak to why Michele wrote</p> <p>18 that, but that's not what happened.</p> <p>19 Q. The fourth paragraph says, "Mike was</p> <p>20 fine with the coaching that Gary provided. What</p> <p>21 Mike didn't like was the follow-up e-mail recapping</p> <p>22 what he said to Mike."</p> <p>23 Is that something you told Michele?</p> <p>24 A. Yes.</p> <p>25 Q. The last -- the second page, it says,</p>

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<p style="text-align: right;">Page 218</p> <p>1 "Gary is a good director and he doesn't want to get 2 him in trouble." 3 Is that what you told Michele? 4 A. Yes. 5 Q. Did you believe that? 6 A. I did not believe it, but what I did 7 believe is that this would get back to Gary and 8 there would be repercussions from that. 9 Q. You told Michele that Gary has not 10 propositioned anybody. Right? 11 A. That was my understanding. He hasn't 12 gone that far. 13 Q. Do you recall on December 19, 2014, 14 turning to the third page, that Michele DeCoux 15 followed up with you, said she looked into the 16 concerns, there's follow-up that she can't share 17 with you and it's now closed? 18 A. Yes. 19 Q. And you told her, I'm glad it's 20 closed? 21 A. If I said that, yeah. I guess I was 22 happy it was closed because obviously I need a good 23 working relationship with my direct superior. 24 Q. So not only did HR interview you 25 about these allegations, they followed up with you</p>	<p style="text-align: right;">Page 220</p> <p>1 Q. This is Simons Exhibit 25. It's your 2 Amended Complaint in this case. 3 Have you seen this before? 4 A. I believe I reviewed this yesterday. 5 Q. So paragraph 6 says, "In October 6 2014, plaintiff followed company procedure and 7 reported to human resources that one of his 8 subordinates, Jillian Rothwell, had been subjected 9 to sexual harassment by a supervisor, Gary 10 Lickovitch." 11 That's not correct, is it? 12 A. What's not correct is just the order 13 of it. So I eventually did talk to HR about it 14 after I sent the e-mail to Gary. 15 Q. Well, you didn't report it. Gary 16 reported it. We've already established that. 17 Right? 18 A. Correct. 19 Q. Paragraph 7 stays, "Although human 20 resources spoke to the offender Lickovitch, and 21 Lickovitch's supervisor Samuel Conaway, human 22 resources did not contact or report to either Ms. 23 Rothwell or to plaintiff regarding any 24 investigation." 25 That's not true either, is it?</p>
<p style="text-align: right;">Page 219</p> <p>1 and told you they concluded? 2 A. They left a call and said it was 3 done, yeah. I didn't recall this, but, you know, 4 obviously if it's here, then we had the discussion. 5 Q. Do you know whether they talked to 6 Jillian? 7 A. I don't. 8 Q. For you, would it be inaccurate for 9 you to say there was no interview of Jillian by HR 10 with respect to this? 11 A. No. There was an interview of 12 Jillian, but I didn't talk to her about the content 13 of that interview. 14 Q. Did Jillian tell you that HR reached 15 out to her? 16 A. She did. But again, also said, we're 17 not supposed to discuss what we discussed. 18 - - - 19 (Deposition Exhibit No. Simons-25, 20 Amended Complaint, Certification Pursuant 21 to R.1:38-7(c), Designation of Trial 22 Counsel, Demand for a Jury Trial, 15 23 pages, was marked for identification.) 24 - - - 25 BY MR. KNAPP:</p>	<p style="text-align: right;">Page 221</p> <p>1 A. That was my recollection at the time, 2 but now we've established that they have reported 3 back to us. 4 Q. You just kind of made that up? 5 A. I didn't make it up. That was my 6 recollection at the time. 7 Q. It was untrue. Right? 8 A. Nope. It was my recollection at the 9 time. 10 Q. Your recollection is not correct? 11 A. That's correct. 12 Q. Do you remember calling Gary after 13 this episode and apologizing for the e-mail you 14 sent? 15 A. I remember having a discussion 16 talking to him about hopefully we could still have a 17 productive work relationship. 18 Q. Do you recall apologizing for having 19 sent that e-mail? 20 A. Yes, I believe I did. 21 Q. Did you recall telling him, I don't 22 want to lose my job? 23 A. Yes. 24 Q. Why did you -- what were you 25 apologizing for? Why did you apologize?</p>

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<p style="text-align: right;">Page 222</p> <p>1 A. Because when situations like this 2 occur in the workplace, it puts a negative mark on 3 the person that you've come to -- the accused. And 4 we've had -- we had arguments that were heated about 5 it. So since it was the first time I've ever had to 6 turn a superior in for doing anything 7 inappropriate -- 8 Q. You didn't turn a superior in, did 9 you? 10 MR. MARTIN: Yes, he did. He 11 reported it directly to the person who did it, who 12 was his supervisor. So that's argumentative. 13 MR. KNAPP: You're not testifying, 14 Counsel, and that's directly in contravention of the 15 court's order. 16 MR. MARTIN: I'm not -- I'm not 17 testifying. It's -- your question is inappropriate. 18 THE WITNESS: I did report it. 19 BY MR. KNAPP: 20 Q. You didn't report it to HR? 21 A. I already established I didn't report 22 it to HR, but I did bring it to Gary's attention to 23 make the behavior stop. 24 Q. Do you recall attending the national 25 sales meeting in early February 2015?</p>	<p style="text-align: right;">Page 224</p> <p>1 were going to kiss her and her turning her head, 2 pushing you away? 3 A. No, I don't recall that exactly, that 4 it went -- that it happened that way. 5 Q. Are you aware that concerns were 6 raised with HR about that? 7 A. I am. 8 Q. And it's your belief that that was 9 Gary Lickovitch that raised those concerns. Right? 10 A. I don't know who it was. 11 Q. You alleged that Gary Lickovitch did 12 that. Right? 13 A. It was my assumption that that was -- 14 that there was a possibility that it was Gary. 15 Q. Or Sam? 16 A. Or Michele DeCoux or Sam. 17 Q. Okay. You thought they were 18 retaliating against you by kind of contriving a 19 sexual harassment complaint. Right? 20 A. At first I absolutely believed that. 21 Q. Kind of like what happened with you 22 and Gary in December. Right? 23 A. That's what you think it was, but 24 that wasn't the situation. 25 Q. Okay. Do you recall Lynn Prust</p>
<p style="text-align: right;">Page 223</p> <p>1 A. I do. 2 Q. Were you drinking there? 3 A. I did drink there. 4 Q. Even though you had been told not to 5 drink at company functions? 6 A. That's correct. But that was long, 7 months before. 8 Q. So it didn't matter? 9 A. Clearly it did. 10 Q. Do you recall an interaction with 11 Jeannette Banks? 12 A. I do. 13 Q. Where you hugged her and tried to 14 kiss her? 15 A. I do. Kissed her hello. 16 Q. Do you remember -- 17 A. Which we've done multiple times 18 before. 19 Q. Do you remember putting your arm 20 around her and saying, you look great? 21 A. Yes. 22 Q. Okay. Do you remember telling her, 23 hey, I'm safe? 24 A. No. 25 Q. Do you remember grabbing her like you</p>	<p style="text-align: right;">Page 225</p> <p>1 calling you? 2 A. I do. 3 Q. You know what I just realized? I 4 think I told you that my understanding was that 5 these notes that are Exhibit 24 were Michele 6 DeCoux's. I think they're actually Lynn Prust's. 7 Do you recall -- 8 MR. MARTIN: That's why I objected to 9 the questions. 10 MR. KNAPP: You should have said 11 something. 12 MR. MARTIN: They're in your hands. 13 You know, you got them and produced them, so our 14 understanding was they were Lynn Prust's notes. And 15 you were representing they were Michele DeCoux's, 16 so... 17 BY MR. KNAPP: 18 Q. Yeah. Do you recall talking to Lynn 19 Prust in December? 20 A. I do. 21 Q. And having the conversation that's 22 outlined in Exhibit 24? 23 A. Yes. When I reviewed Lynn Prust's 24 notes, I recognized that there were inconsistencies 25 with what I felt that I had said and what was</p>

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<p style="text-align: right;">Page 226</p> <p>1 written.</p> <p>2 Q. And those inconsistencies we've</p> <p>3 already discussed. Right?</p> <p>4 A. For this document, yes.</p> <p>5 Q. And then do you recall Lynn Prust</p> <p>6 calling you about the concerns that were raised</p> <p>7 about Jeannette Bankes?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And did you ever consider that</p> <p>10 perhaps it was Jeannette that had made the</p> <p>11 complaint?</p> <p>12 A. I found that hard to believe with the</p> <p>13 relationship that Jeannette and I had, that it was</p> <p>14 very normal for us to give a kiss hello and say how</p> <p>15 are you.</p> <p>16 Q. Did you later come to learn that it</p> <p>17 was in fact Jeannette that made the complaint?</p> <p>18 A. I did.</p> <p>19 Q. Did you talk to Jeannette directly</p> <p>20 about it?</p> <p>21 A. No.</p> <p>22 Q. When did you come to learn that?</p> <p>23 A. I can't remember exactly when. But</p> <p>24 when Lynn Prust started to ask me about did you kiss</p> <p>25 someone at the national sales meeting, I recalled</p>	<p style="text-align: right;">Page 228</p> <p>1 A. That's correct.</p> <p>2 Q. And you say, "None of the female</p> <p>3 employees involved...considered any conduct by</p> <p>4 plaintiff inappropriate."</p> <p>5 Who were the female employees</p> <p>6 involved?</p> <p>7 A. I don't remember their names, but I</p> <p>8 remember Lynn Prust saying that she had spoke to</p> <p>9 three females that were at the table and all of them</p> <p>10 said my behavior was appropriate.</p> <p>11 Q. And so what sexual harassment was</p> <p>12 alleged to have occurred at a table?</p> <p>13 A. At a table?</p> <p>14 Q. Yeah. You said none of the -- Lynn</p> <p>15 Prust told you none of the employees at your table</p> <p>16 reported inappropriate conduct?</p> <p>17 A. I had heard from one of the girls at</p> <p>18 the table that Lynn Prust was calling around to</p> <p>19 girls that were sitting at that table asking if I</p> <p>20 was inappropriate.</p> <p>21 Q. So Lynn didn't tell you that. One of</p> <p>22 the girls at your table told --</p> <p>23 A. One of the girls that was at the</p> <p>24 table let me know that that was the case.</p> <p>25 Q. And by girls, are you referring to</p>
<p style="text-align: right;">Page 227</p> <p>1 the incident of walking in to a table full of Boston</p> <p>2 Scientific employees and giving Jeannette a kiss.</p> <p>3 Q. So if you look at paragraph 9 of your</p> <p>4 Complaint that's in front of you, it says, "Conaway</p> <p>5 and Lickovitch wrongly accused plaintiff of sexual</p> <p>6 harassment of female co-employees. None of the</p> <p>7 female employees involved in the purported event</p> <p>8 considered any conduct by plaintiff inappropriate</p> <p>9 and verified that no sexual harassment had taken</p> <p>10 place."</p> <p>11 A. Yes.</p> <p>12 Q. Do you now understand that not to be</p> <p>13 accurate?</p> <p>14 A. I don't. What I understand and what</p> <p>15 I think I was speaking about here is when Lynn Prust</p> <p>16 said that Gary and Sam had made accusations against</p> <p>17 me.</p> <p>18 Q. About sexual harassment?</p> <p>19 A. About kissing a girl. So whether</p> <p>20 that's classified as sexual harassment or not, I</p> <p>21 have no idea.</p> <p>22 Q. Okay. So that's that one female</p> <p>23 employee?</p> <p>24 A. Yes.</p> <p>25 Q. Singular?</p>	<p style="text-align: right;">Page 229</p> <p>1 adult women?</p> <p>2 A. Adult women, correct.</p> <p>3 Q. Who is Jason Gentile?</p> <p>4 A. He is a manager in Philadelphia.</p> <p>5 Q. Do you recall calling him on or about</p> <p>6 February 25th to talk about Gary and Sam?</p> <p>7 A. No. I don't remember that specific</p> <p>8 date. I know that Jason and I have talked about</p> <p>9 Gary and Sam many times.</p> <p>10 Q. Do you recall calling him drunk in</p> <p>11 late February?</p> <p>12 A. No.</p> <p>13 Q. Do you recall calling him and saying,</p> <p>14 Gary and Sam won't be here very long because they've</p> <p>15 done some things and that someone has some</p> <p>16 incriminating evidence?</p> <p>17 A. I don't remember saying that.</p> <p>18 Q. Okay. Do you recall ever telling</p> <p>19 anybody that you were aware of incriminating</p> <p>20 evidence against Gary and Sam?</p> <p>21 A. I believe I've had discussions with</p> <p>22 people about that.</p> <p>23 Q. Where you've threatened that you can</p> <p>24 bring them down?</p> <p>25 A. Not me.</p>

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<p style="text-align: right;">Page 230</p> <p>1 Q. Who?</p> <p>2 A. So Tom Donlan had apparently evidence</p> <p>3 that he and Sam had shared inappropriate naked</p> <p>4 pictures of females.</p> <p>5 Q. Who took the pictures?</p> <p>6 A. I believe Tom Donlan did.</p> <p>7 Q. So Tom Donlan took naked pictures of</p> <p>8 females?</p> <p>9 A. He did. And Sam asked him to see</p> <p>10 them.</p> <p>11 Q. Did you see this happen?</p> <p>12 A. No. I wasn't --</p> <p>13 Q. Did you see these pictures?</p> <p>14 A. I did not. I was not involved at all</p> <p>15 in that case.</p> <p>16 Q. Who told you about this?</p> <p>17 A. Tom Donlan.</p> <p>18 Q. So you're aware that Tom had naked</p> <p>19 pictures of a female?</p> <p>20 A. He made me aware of it, yes.</p> <p>21 Q. Is this a female he'd had sex with?</p> <p>22 A. I don't know if he had sex with her</p> <p>23 or not.</p> <p>24 Q. Was she passed out?</p> <p>25 A. Was she --</p>	<p style="text-align: right;">Page 232</p> <p>1 A. Because he had spoken to Lynn Prust</p> <p>2 and explained to her that Sam was asking him for</p> <p>3 these pictures.</p> <p>4 Q. Okay. And did you know that it was</p> <p>5 alleged that Tom showed you these pictures?</p> <p>6 A. No, I did not know that it was</p> <p>7 alleged that he showed me these pictures.</p> <p>8 Q. Did you report that to anybody, that</p> <p>9 a manager at Boston Scientific had naked -- pictures</p> <p>10 of a naked woman that he was sharing?</p> <p>11 A. No, I did not.</p> <p>12 Q. Did he in fact share the pictures?</p> <p>13 A. No. I believe -- I don't know if he</p> <p>14 shared the pictures with Sam or not, but he never</p> <p>15 shared them with me.</p> <p>16 Q. And you don't know if he shared them</p> <p>17 with anybody else?</p> <p>18 A. I have no idea.</p> <p>19 Q. What do you think of Tom Donlan?</p> <p>20 A. I think he's a good guy.</p> <p>21 Q. A standup guy?</p> <p>22 A. Yeah.</p> <p>23 Q. High integrity?</p> <p>24 A. I do.</p> <p>25 Q. Do you recall the next day you called</p>
<p style="text-align: right;">Page 231</p> <p>1 Q. Passed out?</p> <p>2 A. No.</p> <p>3 Q. Okay. How did he get pictures of a</p> <p>4 naked female?</p> <p>5 A. Believe it or not, there are naked</p> <p>6 females that allow you to take pictures of them.</p> <p>7 Q. I'm not familiar with that</p> <p>8 personally.</p> <p>9 You are?</p> <p>10 A. I am because he made me aware of it.</p> <p>11 Q. Was this a Boston Scientific</p> <p>12 employee?</p> <p>13 A. No.</p> <p>14 Q. Is it somebody he had had sex with?</p> <p>15 A. I believe so, yes.</p> <p>16 Q. What did he say?</p> <p>17 A. About?</p> <p>18 Q. About it to you.</p> <p>19 A. That Sam was asking him for these</p> <p>20 pictures.</p> <p>21 Q. What did he say about having taken</p> <p>22 the pictures?</p> <p>23 A. He didn't say anything about it.</p> <p>24 Q. How did you know that the pictures</p> <p>25 existed then if he didn't say anything about it?</p>	<p style="text-align: right;">Page 233</p> <p>1 Jason Gentile and apologized for having called him</p> <p>2 and said, I had too many cocktails and I probably</p> <p>3 said too much?</p> <p>4 A. I don't recall saying that, but it</p> <p>5 wouldn't surprise me if I did.</p> <p>6 Q. Why wouldn't it surprise you?</p> <p>7 A. Because if I had done something to</p> <p>8 Jason who I considered a friend, then I would have</p> <p>9 apologized, but I don't recall the incident.</p> <p>10 - - -</p> <p>11 (Deposition Exhibit No. Simons-26,</p> <p>12 Mike Simons PDC 2014, Bates stamped</p> <p>13 BSC00001344 and BSC00001345, was marked</p> <p>14 for identification.)</p> <p>15 - - -</p> <p>16 BY MR. KNAPP:</p> <p>17 Q. I'm showing you what's been marked as</p> <p>18 Exhibit 26.</p> <p>19 Do you recognize this document?</p> <p>20 A. I just saw this document yesterday</p> <p>21 for the first time.</p> <p>22 Q. Do you know what it is?</p> <p>23 A. It's apparently, although not in the</p> <p>24 normal format that we used to have, a PDC written by</p> <p>25 Gary.</p>

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<p style="text-align: right;">Page 234</p> <p>1 Q. But you do not recall ever receiving 2 this?</p> <p>3 A. I don't recall receiving it, because 4 I'm not sure whether he gave it to me before I went 5 away for treatment or not.</p> <p>6 Q. Were you aware of anybody at Boston 7 Scientific sharing naked pictures of women that 8 they've slept with, with anybody?</p> <p>9 A. I'm aware that just the interaction 10 happened between Sam and Tom Donlan.</p> <p>11 Q. And that you're aware of that because 12 Tom told you?</p> <p>13 A. Yes.</p> <p>14 Q. Are you aware of that ever happening 15 before with anybody, somebody having naked pictures 16 of a woman they slept with and offering to show it 17 to somebody else?</p> <p>18 A. I'm not aware of that happening. 19 - - -</p> <p>20 (Deposition Exhibit No. Simons-27, 21 E-mail chain, top one dated 2/20/2015, 22 Bates stamped BSC00001737, BSC00001737 and 23 BSC00001736, was marked for 24 identification.) 25 - - -</p>	<p style="text-align: right;">Page 236</p> <p>1 Q. Okay. Why? Did he tell you that? 2 A. Which is my understanding. I think I 3 recall him telling me that. She sent them to him. 4 He wasn't in the pictures.</p> <p>5 Q. When you said she seemed to consent, 6 it sounds like maybe you saw them perhaps and --</p> <p>7 A. I don't know. No. I don't know the 8 situation. I remember having a discussion with Tom 9 Donlan when he was involved with HR and explaining 10 that Sam was being inappropriate with him.</p> <p>11 Q. Do you know if she consented to his 12 sharing those naked pictures of her with others?</p> <p>13 A. I don't know that at all.</p> <p>14 Q. Did you ask him?</p> <p>15 A. No.</p> <p>16 Q. Did you tell him, hey, it could be a 17 violation of criminal law for you to be showing 18 pictures of somebody naked --</p> <p>19 A. Never had that discussion with him.</p> <p>20 Q. Okay. All right. So the Q1 sales 21 call, you accepted that you were going to 22 participate in that call. Right?</p> <p>23 A. Yes.</p> <p>24 Q. You had been drinking that evening. 25 Right?</p>
<p style="text-align: right;">Page 235</p> <p>1 BY MR. KNAPP: 2 Q. Showing you what's been marked as 3 Exhibit 27, Mr. Simons. There's a February 27th Q1 4 sales call.</p> <p>5 Do you recall that?</p> <p>6 A. I do.</p> <p>7 Q. Scheduled for 5:30 to 6:00 p.m. 8 Eastern Time?</p> <p>9 A. I do.</p> <p>10 Q. And what is a Q1 sales call?</p> <p>11 A. Essentially it's senior leadership 12 and regional managers getting onto a sales call to 13 discuss forecast and sales for the end of the 14 quarter.</p> <p>15 Q. Can I back up because this is 16 bothering me.</p> <p>17 Did the woman who Tom Donlan took 18 naked pictures of consent to the pictures being 19 taken?</p> <p>20 A. I've never spoken to her and I have 21 no idea. She seemed to consent.</p> <p>22 Q. Why?</p> <p>23 A. Because I've never heard otherwise. 24 I wouldn't know if she consented. I believe she 25 sent them to him.</p>	<p style="text-align: right;">Page 237</p> <p>1 A. No. 2 Q. Did you drink at all that evening? 3 A. No. 4 Q. Not at all? 5 A. I did not drink at all before the 6 conference call.</p> <p>7 Q. How about afterwards? 8 A. No. 9 Q. You deny that you were drunk at all 10 or intoxicated at all on February 27th. Correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And you're aware now that others 13 complained that you were slurring your speech when 14 you spoke on this call. Right?</p> <p>15 A. I'm aware that people have made that 16 accusation.</p> <p>17 Q. And you deny it? 18 A. That's correct. 19 Q. You weren't drunk? 20 A. No. 21 Q. Do you recall where you were that 22 evening? 23 A. I was at home. 24 Q. And what were you doing at home? 25 A. I had just finished up a call with a</p>

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<p style="text-align: right;">Page 238</p> <p>1 customer where we had won a contract.</p> <p>2 Q. With St. Francis Hospital?</p> <p>3 A. With Catholic Health System, yes.</p> <p>4 Q. And did you celebrate that evening?</p> <p>5 A. I had made a few calls to family and</p> <p>6 friends saying I was excited about the deal, because</p> <p>7 they knew that I was working on it.</p> <p>8 Q. Did you celebrate by drinking that</p> <p>9 evening?</p> <p>10 A. I already stated no.</p> <p>11 Q. What's that?</p> <p>12 A. I already stated no.</p> <p>13 Q. Okay. And you -- do you know what</p> <p>14 you did after the call?</p> <p>15 A. I don't recall.</p> <p>16 Q. Nothing stands out to you, though?</p> <p>17 A. No. I saw a document where my</p> <p>18 ex-wife had claimed that I went out to a work dinner</p> <p>19 and took a car service home. I believe she was</p> <p>20 incorrect about the date, because it would be very</p> <p>21 rare that I would do a Friday night work dinner and</p> <p>22 never take a car service or have a neighbor being</p> <p>23 babysitting my children unless it was an extreme</p> <p>24 emergency.</p> <p>25 Q. And in fact, if you had, if you had</p>	<p style="text-align: right;">Page 240</p> <p>1 A. He was fired.</p> <p>2 Q. What?</p> <p>3 A. He was fired.</p> <p>4 Q. How about Craig Brandli?</p> <p>5 A. He still works for the company.</p> <p>6 That's my recollection.</p> <p>7 - - -</p> <p>8 (Deposition Exhibit No. Simons-28,</p> <p>9 E-mail chain, top one dated 3/12/2015,</p> <p>10 Bates stamped BSC00001910 and BSC00001911,</p> <p>11 was marked for identification.)</p> <p>12 - - -</p> <p>13 BY MR. KNAPP:</p> <p>14 Q. So this Friday in March -- I'm sorry,</p> <p>15 the date that you were alleged to have been drunk on</p> <p>16 the call, February 27th, was just three weeks before</p> <p>17 you went into treatment. Right?</p> <p>18 A. That's correct.</p> <p>19 Q. And you were in the darkest stages of</p> <p>20 your alcoholism at that point. Correct?</p> <p>21 A. No.</p> <p>22 Q. When were the darkest stages?</p> <p>23 A. I finally had hit rock bottom when I</p> <p>24 got my DUI.</p> <p>25 Q. So the dark -- it's limited to one</p>
<p style="text-align: right;">Page 239</p> <p>1 your children that evening and were drinking, she</p> <p>2 could pull the plug on you. Right?</p> <p>3 A. She had no legal basis to pull the</p> <p>4 plug on me. She would do things on her own accord,</p> <p>5 but there was no court order that said that.</p> <p>6 Q. She threatened that if you got drunk</p> <p>7 again when your kids were at home --</p> <p>8 A. She made --</p> <p>9 Q. -- she was going to prevent you from</p> <p>10 being with them again. Right?</p> <p>11 A. She made a great deal of threats over</p> <p>12 the course of the six years that we were in</p> <p>13 conflict.</p> <p>14 Q. So have you talked to anybody who</p> <p>15 heard you on the call that said you weren't drunk?</p> <p>16 A. Yeah.</p> <p>17 Q. Who is that?</p> <p>18 A. I spoke to Tom Donlan. I spoke to</p> <p>19 Jim Toto. And I forgot, I think I had spoken to</p> <p>20 someone in marketing, Craig Brandli, who said, you</p> <p>21 were fine.</p> <p>22 Q. Of those three guys, Jim Toto was</p> <p>23 fired. Right?</p> <p>24 A. He was.</p> <p>25 Q. How about Tom Donlan?</p>	<p style="text-align: right;">Page 241</p> <p>1 day?</p> <p>2 A. No. It's -- it progressively got</p> <p>3 worse. There was not drinking every single day.</p> <p>4 Q. And it's a Friday evening. You're</p> <p>5 happy because you just landed a big deal. Right?</p> <p>6 A. Correct.</p> <p>7 Q. And you deny drinking that evening?</p> <p>8 A. I do.</p> <p>9 Q. And showing you what's been marked as</p> <p>10 Exhibit 28, this is the e-mail that you referenced</p> <p>11 between you and Lacia where she is upset that you,</p> <p>12 among other things, had a car service that brought</p> <p>13 you home that evening. Right?</p> <p>14 A. Yes.</p> <p>15 Q. So if you look at the first page of</p> <p>16 this Exhibit 28, there's an e-mail from her to you</p> <p>17 dated March 12th at 9:43. She says, "The fact that</p> <p>18 you took a car service home from a work dinner</p> <p>19 because 'you had a few drinks' on the 27th during</p> <p>20 parenting time clearly indicates that you are not."</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. Do you recall telling her you had a</p> <p>24 few drinks on the 27th?</p> <p>25 A. I don't. And the fact of the matter</p>

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<p style="text-align: right;">Page 250</p> <p>1 Bates stamped BSC00001346 and BSC00001347, 2 was marked for identification.) 3 - - - 4 BY MR. KNAPP: 5 Q. Showing you what's been marked as 6 Exhibit 30, do you recall getting this e-mail from 7 Gary Lickovitch on March 6th? 8 A. I do not recall that. It's clear 9 that he sent it. 10 Q. And he said earlier in the first 11 e-mail, which is the first and second page, bottom 12 of the first and top of the second, he's concerned 13 that you missed a Northeast med ed conference call 14 the day before. Right? 15 A. Correct. 16 Q. I hope everything is okay. We spoke 17 yesterday. I went over the expectations of the 18 call. And when I called your name to take your 19 team's roll, you weren't present. 20 Do you see that? 21 A. Yes. 22 Q. Was that true? 23 A. I'm sure it was. 24 Q. Do you know why you didn't -- 25 A. I don't recall --</p>	<p style="text-align: right;">Page 252</p> <p>1 A. Yeah. So I don't recall missing that 2 and -- I don't recall what the reason would have 3 been, but I think just assuming that I was drinking 4 is probably incorrect. 5 Q. Why would that be an incorrect 6 assumption giving what was going on? 7 A. Because there are many reasons why 8 you would miss a conference call, whether it's not 9 in your calendar or you're customer facing with 10 business. Just to make that leap would be too much 11 for me to do because I don't remember March 6th 12 specifically. 13 Q. Do you recall after the car service 14 e-mail from your wife, that your wife said, you're 15 not picking up the kids from school anymore until 16 further notice? 17 A. In March? 18 Q. Yeah. 19 A. Yeah, I remember her saying that. 20 Q. And did you comply with that? 21 A. No. 22 Q. Why not? 23 A. Because I didn't feel that she had a 24 basis to do that. 25 Q. What caused that consent order to be</p>
<p style="text-align: right;">Page 251</p> <p>1 Q. Go ahead. 2 A. -- if I was working or doing -- in an 3 appointment where I was customer facing, that would 4 be a reason for missing a conference call, but I 5 can't specifically say. 6 Q. And could it be because you were 7 drink -- intoxicated? 8 A. No. I mean, I -- it's possible but I 9 don't think likely that I would have missed a call 10 for that reason. 11 Q. And he says, "We have a number of 12 conference calls today, my expectation as it always 13 is, is that you and your teams are on the...calls as 14 requested and...on time!" Right? 15 A. Yes. And I assume I made all those 16 calls if there was not a subsequent e-mail sent to 17 me. 18 Q. And then the first page, there's an 19 e-mail that Friday later in the day where he said, 20 we're on this Watchman call, they just called your 21 name and you're not on. What's going on? 22 Do you recall missing that call too? 23 A. I don't recall missing that call, but 24 this is 3/6, both of these messages. 25 Q. Uh-huh.</p>	<p style="text-align: right;">Page 253</p> <p>1 entered in January 2015 when you had divorced back a 2 year or two earlier? Was there some event that 3 occurred? 4 A. There was. She had filed a 5 restraining order against me, which we have 6 previously discussed. She extended that restraining 7 order, threatening to do a permanent restraining 8 order, until I changed the consent order to agree to 9 her wishes. 10 Q. Was the domestic disturbance with 11 Anna Knighten one of the reasons? 12 A. I don't think so, no. This had 13 everything to do with Lacia and her expectations of 14 me parenting time. But again, I can't speak for her 15 reasons. 16 Q. When did you learn that there had 17 been an accusation that you were drunk on the 18 February 27th call? 19 A. The first time I had heard that ever 20 was the day that I met in the hotel lobby and they 21 stated that as a reason for my termination. 22 Q. You had not -- okay. So that was 23 after you came back from your leave? 24 A. That's correct. 25 Q. And you don't recall talking to Lynn</p>

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<p style="text-align: right;">Page 254</p> <p>1 Prust about that at all?</p> <p>2 A. I don't recall what time -- what</p> <p>3 date -- maybe I did talk to her before. I don't</p> <p>4 recall that. But I remember denying that to Lynn</p> <p>5 Prust. If she had brought it up, I would have</p> <p>6 denied it because it wasn't true.</p> <p>7 Q. So March 2015, that's the time by</p> <p>8 then you should have your evaluations of your team</p> <p>9 completed. Right?</p> <p>10 A. I don't remember the exact date. I</p> <p>11 believe March 31st you have to have everything done.</p> <p>12 Q. Okay. Did you tell Gary you had</p> <p>13 completed those?</p> <p>14 A. I told Gary I was in the process of</p> <p>15 completing them.</p> <p>16 Q. And had you even started them yet</p> <p>17 before you went out on your leave?</p> <p>18 A. I'm not positive. I mean, I make</p> <p>19 notes about what I'm going to put in them on a</p> <p>20 regular basis, if there are specific incidents, but</p> <p>21 I don't know whether I started writing them out yet.</p> <p>22 Q. Do you recall in early March before</p> <p>23 your DWI that Lynn Prust reached out to you to</p> <p>24 schedule a call and you were concerned that she was</p> <p>25 calling you?</p>	<p style="text-align: right;">Page 256</p> <p>1 A. I never told him that. In fact, I'd</p> <p>2 like to go on the record and say why would I ever</p> <p>3 tell one of my supervisors who I knew were trying to</p> <p>4 come after me something about that personal life.</p> <p>5 Q. Did you say you kissed a clinical</p> <p>6 from Jason's region?</p> <p>7 A. I did not. And Jason's region has</p> <p>8 two male clinicals in it.</p> <p>9 Q. Did you call Jim Toto and tell him</p> <p>10 that Gary and Sam got me?</p> <p>11 A. Jim Toto and I discussed that Gary</p> <p>12 and Sam were making accusations. And that call was</p> <p>13 after Lynn Prust had made it clear that Gary and Sam</p> <p>14 were making false accusations against me.</p> <p>15 Q. Did you call Jim Toto and say that</p> <p>16 Gary and Sam got me?</p> <p>17 A. I don't know the exact terminology</p> <p>18 that I used, but I wouldn't say got me. I mean -- I</p> <p>19 meant they're coming after me.</p> <p>20 Q. Did the fact that Lynn called -- was</p> <p>21 scheduling this meeting with you create anxiety for</p> <p>22 you?</p> <p>23 A. It was a great deal of anxiety when</p> <p>24 Lynn Prust called on a regular basis, yes.</p> <p>25 Q. How many times do you think you spoke</p>
<p style="text-align: right;">Page 255</p> <p>1 A. Of course. Everyone is concerned</p> <p>2 when compliance calls and when your bosses are</p> <p>3 making accusations against you. I think it would be</p> <p>4 very normal.</p> <p>5 Q. Do you recall that that call was</p> <p>6 supposed to be the -- early in the week of the week</p> <p>7 that you got your DWI?</p> <p>8 A. I don't recall the time. Lynn Prust</p> <p>9 called me so many times, I couldn't pinpoint the</p> <p>10 exact date and time that she wanted to talk that</p> <p>11 specific time.</p> <p>12 Q. Do you recall the preceding Friday,</p> <p>13 so March 6th, that you called Gary and said, I'm</p> <p>14 concerned she's calling me?</p> <p>15 A. I think I expressed concern to Gary</p> <p>16 that compliance was calling. That would be a normal</p> <p>17 thing to express to your supervisor.</p> <p>18 Q. Did you recall telling Gary that</p> <p>19 there was somebody -- a woman staying in the room</p> <p>20 next to you at the national sales meeting that you</p> <p>21 made out with?</p> <p>22 A. I never said that to Gary.</p> <p>23 Q. Did you say it to anybody?</p> <p>24 A. No. Because it never happened.</p> <p>25 Q. Did you tell Sam the same thing?</p>	<p style="text-align: right;">Page 257</p> <p>1 to her? You said she called on a regular basis?</p> <p>2 A. Well, I couldn't pinpoint the number</p> <p>3 of times.</p> <p>4 Q. Like four maybe?</p> <p>5 A. Probably more, before and after my</p> <p>6 treatment.</p> <p>7 Q. How about before --</p> <p>8 A. As soon as I got back from treatment,</p> <p>9 she started calling me again.</p> <p>10 Q. How about before your treatment, how</p> <p>11 many times did you talk to Lynn?</p> <p>12 A. I couldn't -- I couldn't answer that.</p> <p>13 I don't know.</p> <p>14 Q. Three?</p> <p>15 A. I don't recall. It was over a year</p> <p>16 ago. I don't recall.</p> <p>17 Q. Well, you said it was regularly?</p> <p>18 A. When compliance calls more than once,</p> <p>19 that's regularly.</p> <p>20 Q. Okay.</p> <p>21 A. And she called on several different</p> <p>22 issues.</p> <p>23 Q. Do you remember when she spoke to you</p> <p>24 on March 11th, you told her you were recording the</p> <p>25 call?</p>

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<p>1 A. I did. And I explained to her after 2 recording the call, meaning I'm taking notes on the 3 call. And yes, I do recall that. 4 Q. You said you were recording the call. 5 Right? 6 A. Yes. And by recording I meant taking 7 notes. 8 Q. You said you were recording the call. 9 Right? 10 A. Correct. 11 Q. You didn't say, and by the way, what 12 I mean is I'm writing notes when you first said it, 13 did you? 14 A. Not when I first said it. 15 Q. She said, you can't record the call. 16 Right? 17 A. She did say that. 18 Q. You said, it's legal in New Jersey? 19 A. I did say that. 20 Q. And she said it's not legal in 21 Minnesota where she was. Right? 22 A. Correct. 23 Q. She didn't consent? 24 A. She said that. 25 Q. Yeah. And it wasn't until the end of</p>	<p>1 A. No. 2 Q. Do you recall telling her, you have 3 photos and text messages that would bring people 4 down? 5 A. I had text messages. 6 Q. Do you recall telling her that you 7 had photos and text messages that -- 8 A. No, I don't recall saying I have 9 photos. 10 Q. -- would bring people down? 11 A. What photos would I have? 12 Q. Let me ask the question. Don't 13 interrupt me. 14 Do you recall telling her that you 15 had photos and text messages that would bring people 16 down? 17 A. I don't recall telling her that. 18 Q. You told her you had text messages 19 that would bring people down? 20 A. We did mention text messages, 21 correct. 22 Q. Why are you threatening to bring 23 anybody down? 24 A. Because I felt like Sam and Gary at 25 this point were on a witch hunt after me, and I felt</p>
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<p>1 the conversation you said, well, actually, I meant 2 I'm just taking the notes? 3 A. It wasn't the end of the 4 conversation. It was right after she said it's not 5 legal in Minnesota and I clarified I'm not recording 6 this physically, I'm taking notes. 7 Q. So you meant to say it's legal in New 8 Jersey to take notes of a conversation? 9 A. I believe it's -- 10 Q. Is that what you intended to 11 communicate to her? 12 A. I believe it's legal in New Jersey to 13 take notes in a conversation, yes. 14 Q. That's what you were saying? 15 A. I did. 16 Q. Do you think there's any state in the 17 country where it's illegal to take notes of a 18 conversation? 19 A. No, I don't. 20 Q. When did you state, it's legal in New 21 Jersey? 22 A. Because I'm allowed to takes notes 23 during a call. 24 Q. You were making stuff up, weren't 25 you?</p>	<p>1 like Lynn Prust was not only investigating the one 2 case of sexual harassment, that this turned into an 3 investigation of Mike Simons as opposed to an 4 incident. 5 Q. Because you didn't realize Jeannette 6 Bankes had come forward? 7 A. I had no idea Jeannette Bankes at 8 that point had come forward. 9 Q. You thought it was about you having 10 kissed somebody else? 11 A. That's what Lynn Prust had relayed to 12 me. 13 Q. Okay. You don't recall bringing that 14 up with Lynn yourself as opposed to Lynn bringing it 15 up with you? 16 A. I don't recall bringing that up 17 myself, no. 18 Q. Okay. And she asked you for the 19 photo and text messages, and you then responded, I 20 don't have them? 21 A. Yes. I also responded to her that 22 she could get them because Boston Scientific 23 controlled our text messages if she wanted to do a 24 thorough investigation. 25 Q. What happened on the day of March</p>

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<p style="text-align: right;">Page 262</p> <p>1 12th -- so I know the DWI was on March 12th, but 2 take me through your day. 3 What happened in the morning and... 4 A. So in the morning, got up, regular 5 day. 6 The night -- the day before was my 7 day to pick up the children, so I went to their 8 school to pick them up at regular time. 9 Q. The day before? 10 A. The day before, the 11th. The 11 principal had informed me that their mother had 12 picked them up early from school, which she wasn't 13 supposed to do. That was upsetting to me. Yet when 14 I called her cell phone, there was nothing. She 15 wouldn't answer. There was nothing I could do. The 16 kids were with their mother. 17 Q. So can I just interrupt you? I'm 18 sorry. I want to make sure I understand. 19 So this all was the day before? 20 A. This is the 11th. 21 Q. Okay. Who's the principal at that 22 school? 23 A. I don't know her name. They don't go 24 there any longer. 25 Q. What school is it?</p>	<p style="text-align: right;">Page 264</p> <p>1 up? 2 A. I don't remember the exact time. 3 It's on the police report. I think it's 3:30 or 4 2:30. 5 Q. It was 2:30 when they arrested you? 6 A. Yeah. 7 Q. But you said you went there earlier? 8 A. I had gone there around noon -- 9 Q. You went there at noon to pick them 10 up? 11 A. -- to pick them up. 12 Yeah. I was going to take them out 13 because I didn't know if she was going to pick them 14 up early again. 15 MR. MARTIN: Is that the first or 16 second time you took them? 17 THE WITNESS: The first time I went 18 was noon. 19 BY MR. KNAPP: 20 Q. So is it your testimony that you 21 hadn't been drinking at all prior to noon? 22 A. Right. That's correct. 23 Q. Not at all, not a drop? 24 A. No. I drank the night before, you 25 know, and then at that point, like you described it,</p>
<p style="text-align: right;">Page 263</p> <p>1 A. St. Elizabeth. 2 Q. Okay. I'm sorry, go ahead. 3 A. So then the following morning I just 4 did regular things. You know, I don't recall 5 exactly what regular things, but... 6 Q. What do you mean, regular things? 7 A. Checked e-mails, you know, 8 whatever -- whatever normal work that I had. 9 Q. Okay. 10 A. I went to pick the kids up midday, 11 thinking I'll go even earlier than she went the day 12 before, to get my children. The principal then 13 informed me that their mother had told the school 14 that they were not supposed to release the children 15 to me. And then I went home stressed, frustrated. 16 I told the principal, I'll come back with the 17 consent order that shows that this is my day and I 18 have every right to pick my own children up. 19 I did drink that day from the time 20 between when I went the original time till I went 21 back the second time, made an extremely poor 22 judgment call. Attempted to pick my kids up. I 23 still had felt fine. And at that point I was met by 24 the Wyckoff Police. 25 Q. So what time did you go to pick them</p>	<p style="text-align: right;">Page 265</p> <p>1 it was -- you know, I was suffering from the disease 2 of alcoholism, so I drank quite a bit, I believe, 3 the night before. 4 Q. So -- but you were sober by the 5 morning. Right? 6 A. I don't know that you're always -- 7 that you're ever really sober depending on how much 8 you drink the night before, but I did not drink that 9 morning before I went to pick them up. 10 Q. Were you drunk when you went at noon 11 to pick them up? 12 A. No, I was not. 13 Q. So how long does it take to get from 14 your house to the school? 15 A. I'll estimate 10 minutes. 16 Q. Okay. So how long were you there 17 when you went at noon, when you had this 18 interaction, they said you can't pick them up? 19 A. 2 minutes. I walked in the front 20 door, tried to sign them out, the principal came out 21 of her office, told me about their mother. I said 22 I'll come back with the consent order. 23 Q. That all occurred in 2 minutes? 24 A. It occurred very quickly, you know, 2 25 to 5 minutes. I was there not a long time.</p>

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<p style="text-align: right;">Page 266</p> <p>1 Q. Okay. So in the roughly two hours 2 between that and coming back, you got drunk? 3 A. That's correct. 4 Q. And the blood alcohol content was 5 like what, that you were tested at? 6 A. The blood alcohol content was shown 7 to be -- shown to be taken on a faulty breathalyzer. 8 Q. Sure. 9 A. And the breathalyzer was subsequently 10 not used anymore by Wyckoff Police. So I don't know 11 that the blood alcohol content was accurate. 12 Q. .25 percent. Right? 13 A. That's what they recorded. But 14 again, it was proven that that was an ineffective 15 blood alcohol breathalyzer. 16 Q. By who? 17 A. My attorney had figured that out and 18 spoken to the prosecutor, and they agreed that the 19 blood alcohol breathalyzer was infective and 20 inaccurate. 21 Q. Is that in a court filing anywhere? 22 A. I'm not sure whether my lawyer filed 23 it, but he did make a motion and send it to the 24 prosecutor, I believe. 25 Q. Uh-huh.</p>	<p style="text-align: right;">Page 268</p> <p>1 breathalyzer with your defense attorney. 2 THE WITNESS: Right. 3 MR. MARTIN: He said it was ruled 4 out. 5 So what else did he tell you about 6 the breathalyzer is the question? 7 MR. KNAPP: No. About any of this. 8 THE WITNESS: Well, obviously we 9 talked about potential penalties for a DUI. 10 BY MR. KNAPP: 11 Q. Did you admit that you had been 12 drinking that morning with him? 13 A. I don't recall if he ever asked me 14 that question. 15 Q. We'll follow that up separately. 16 So you get drunk in the period of two 17 hours to the point where a breathalyzer test, which 18 you claim is inaccurate, reported you as having 19 a .25 percent blood alcohol content. Right? 20 A. Correct. 21 Q. And do you realize what .25 percent 22 means? 23 A. I do. 24 Q. That's like you're almost dead. 25 Right?</p>
<p style="text-align: right;">Page 267</p> <p>1 A. So, you know, essentially why it was 2 proved that the blood alcohol breathalyzer was 3 ineffective and had issues, there's still New Jersey 4 law which says a police field sobriety test is 5 enough to be convicted of a DUI. So, you know, 6 that's why we went forward with the case the way we 7 did. 8 Q. But there was never any finding that 9 this was an inaccurate blood alcohol reading. 10 Correct? 11 A. I would have to check with my 12 attorney that did the DUI, but he relayed to me that 13 he proved that it was an inaccurate -- that it 14 was -- that there was problems with the 15 breathalyzer. 16 Q. What else did you talk to your 17 attorney about with respect to that? 18 MR. MARTIN: I object. It's 19 attorney-client privilege. 20 BY MR. KNAPP: 21 Q. He's waived it. 22 A. How did I waive it? 23 Q. By telling me what he told you. 24 A. Okay. 25 MR. MARTIN: He asked you about the</p>	<p style="text-align: right;">Page 269</p> <p>1 A. No, that's not what it means. 2 Q. Okay. Do you know how many drinks 3 you'd have to have -- 4 A. So your information -- 5 Q. -- over a two-hour period to get to 6 that level? 7 A. I don't know. 8 Q. Do you recall telling the police that 9 you actually had been drinking from 8:00 to noon? 10 A. I don't recall telling the police 11 that. I don't know whether that was reported 12 accurately. 13 Q. Yeah. The blood alcohol content is 14 wrong, the police are wrong, your wife is wrong, the 15 principal is wrong, Boston Scientific is wrong. 16 Right? 17 MR. MARTIN: I object. It's 18 argumentative and complex, your question. You can 19 break it down if you want, but you're arguing with 20 the witness. 21 BY MR. KNAPP: 22 Q. Are you -- have you been criticized 23 as being unwilling to take responsibility for your 24 conduct? 25 A. I have.</p>

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<p style="text-align: right;">Page 270</p> <p>1 Q. Is that happening now?</p> <p>2 A. As we sit here, no. I've taken</p> <p>3 accountability for my actions.</p> <p>4 Q. Do you remember telling them you had</p> <p>5 prosegco that day?</p> <p>6 A. I don't remember telling them that,</p> <p>7 but that's a possibility.</p> <p>8 Q. Could you have told them you had</p> <p>9 three to four drinks of prosegco?</p> <p>10 A. I think I may have said that to them.</p> <p>11 Q. What's that?</p> <p>12 A. I think I may have said that to them.</p> <p>13 Q. Okay. Where did you go to eat for</p> <p>14 lunch? Anywhere?</p> <p>15 A. No. I realized that that was an</p> <p>16 inaccurate statement to my attorney, that it wasn't</p> <p>17 lunch, that I drank at home.</p> <p>18 Q. So the interrogatory responses that</p> <p>19 you signed as being truthful were not correct, that</p> <p>20 you didn't go out for lunch and have drinks?</p> <p>21 A. Not that day.</p> <p>22 Q. Okay. And you told your attorney</p> <p>23 something that wasn't true?</p> <p>24 A. This happened a year ago, so at times</p> <p>25 the total recall of what -- exactly what happened is</p>	<p style="text-align: right;">Page 272</p> <p>1 had it addressed that way by a judge that you're in</p> <p>2 contempt. I have been in contempt of court I</p> <p>3 believe when I violated a restraining order and went</p> <p>4 to prison, which we covered, or went to jail, which</p> <p>5 we covered.</p> <p>6 Q. Got it. The police report indicates</p> <p>7 you were swaying, staggering, had slurred speech and</p> <p>8 smelled of alcohol that day.</p> <p>9 A. Correct.</p> <p>10 Q. Is that -- do you deny any of that?</p> <p>11 A. When you -- when you are drunk, you</p> <p>12 don't see yourself as others see yourself. So if</p> <p>13 that's what they said, I'm sure that that's correct.</p> <p>14 Q. So that would apply to the February</p> <p>15 27th call too. Right?</p> <p>16 A. I wasn't drunk on the February 7th</p> <p>17 (sic) call. I've already stated that.</p> <p>18 Q. But you don't see yourself as others</p> <p>19 see you. Right?</p> <p>20 A. I wasn't drinking so I couldn't have</p> <p>21 been drunk.</p> <p>22 - - -</p> <p>23 (Deposition Exhibit No. Simons-31,</p> <p>24 Documents from Wyckoff Police Department,</p> <p>25 11 pages, was marked for identification.)</p>
<p style="text-align: right;">Page 271</p> <p>1 not accurate.</p> <p>2 Q. It's a pretty important event,</p> <p>3 though, right, in this case?</p> <p>4 A. Pretty important event.</p> <p>5 Q. And you were intoxicated and went to</p> <p>6 pick up your children to care for them when the</p> <p>7 consent order that the court had issued said you</p> <p>8 can't do that. Right?</p> <p>9 A. That's correct.</p> <p>10 Q. So you were violating the court</p> <p>11 order?</p> <p>12 A. I did not violate the court order. I</p> <p>13 was not allowed to get to that point, but yes.</p> <p>14 Q. You were intending to?</p> <p>15 A. That's correct.</p> <p>16 Q. Do you think had you had the</p> <p>17 children -- let me back up.</p> <p>18 Have you ever been held in contempt</p> <p>19 of court?</p> <p>20 A. No.</p> <p>21 Q. No?</p> <p>22 A. Not that I can recall. In contempt</p> <p>23 of court?</p> <p>24 Q. For violating a court order.</p> <p>25 A. We have never gone back to court and</p>	<p style="text-align: right;">Page 273</p> <p>1 - - -</p> <p>2 BY MR. KNAPP:</p> <p>3 Q. So these are -- Exhibit 31 are some</p> <p>4 of the court or arrest records relating to your DWI</p> <p>5 arrest.</p> <p>6 If you look at page 2, under the</p> <p>7 narrative, it says, "Lacia further stated that St.</p> <p>8 Elizabeth's school has an e-mail regarding the civil</p> <p>9 order, which states that Michael is not permitted to</p> <p>10 have custody of their children; as he has failed to</p> <p>11 attend his ETG appointments for his alcoholism."</p> <p>12 Do you know what that's referring to?</p> <p>13 A. I believe Lacia wrote an e-mail</p> <p>14 saying she's withholding parenting time. But that</p> <p>15 never went to the court, it went to St. Elizabeth</p> <p>16 School.</p> <p>17 Q. Understood. Okay. And when did you</p> <p>18 in fact fail to go to an ETG appointment after</p> <p>19 having the kids?</p> <p>20 A. I don't recall. We had a</p> <p>21 disagreement about what the code for the ETG test</p> <p>22 is. So when you go to LabCorp, there's an 80-hour</p> <p>23 test and then there's an acute alcohol test. And my</p> <p>24 physician who gave me the script to get this had put</p> <p>25 the wrong code down. And there was a discrepancy</p>

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<p style="text-align: right;">Page 274</p> <p>1 between Lacia and I if I was taking the correct 2 test.</p> <p>3 Q. So you were charged with not just a 4 DWI but some other things too. Right?</p> <p>5 A. I believe charged with reckless 6 driving, which is common in these cases and was 7 since dismissed.</p> <p>8 Q. Do you remember getting ticketed or 9 arrested for obstructing passage of another vehicle?</p> <p>10 A. I don't remember that.</p> <p>11 Q. Back in September 2012?</p> <p>12 A. I don't recall that. I don't even 13 know what that means.</p> <p>14 Q. How about following too closely?</p> <p>15 A. I do remember that and should have 16 fought it.</p> <p>17 Q. What was that about?</p> <p>18 A. I pulled onto a highway from an off 19 ramp. And everyone on Route 208 was on their way to 20 work going at a high rate of speed. And the officer 21 said that I was too close to the car as I tried to 22 move in between two cars and enter the highway.</p> <p>23 Q. Were you mad at somebody?</p> <p>24 A. No. I was trying to get on, on an 25 extremely busy road in the morning during rush hour,</p>	<p style="text-align: right;">Page 276</p> <p>1 A. I have no clue what their policy is 2 on that.</p> <p>3 Q. After all the corrective counseling, 4 you didn't have any clue that maybe you could be 5 fired for getting a DWI during a workday?</p> <p>6 A. At that point I wasn't thinking of 7 getting fired, not getting fired; I just knew things 8 were contentious between my senior leaders, and I 9 knew that finally I was ready for treatment and 10 suffering from alcoholism and it was time to get 11 help. So my first thought was not about my job, it 12 was about me getting better.</p> <p>13 Q. Because at that point you knew you'd 14 violated the consent order. You wouldn't be able to 15 see your kids again probably, right, unless you did 16 something to fix it?</p> <p>17 A. Listen, I knew I was in a lot of 18 trouble with my ex. I got a DUI trying to pick them 19 up at school. I was making no bones about it that I 20 was troubled.</p> <p>21 Q. And it was also trouble at work?</p> <p>22 A. And once --</p> <p>23 Q. Correct?</p> <p>24 A. Once the reality -- I had no conflict 25 at work at that point. My first thought were my</p>
<p style="text-align: right;">Page 275</p> <p>1 and I happened to pass a police officer as I was 2 entering the ramp.</p> <p>3 Q. So my apologies if I've asked you 4 this already, but you're brought in on the 12th for 5 this DWI. Right?</p> <p>6 A. I believe so, yes.</p> <p>7 Q. And you're released when?</p> <p>8 A. That evening. Later that day.</p> <p>9 Q. Okay. If you look at the last page 10 of this exhibit, it says, "Do not release until 1930 11 hours on 3/13/2015 due to elevated" --</p> <p>12 A. That's the vehicle.</p> <p>13 MR. MARTIN: That's the vehicle 14 release authorization.</p> <p>15 MR. KNAPP: Got it.</p> <p>16 BY MR. KNAPP:</p> <p>17 Q. All right. So did you tell anybody 18 at Boston Scientific that you had been arrested for 19 DWI on that Friday?</p> <p>20 A. I don't believe so. I don't recall.</p> <p>21 Q. And why did you choose not to do 22 that?</p> <p>23 A. A host of reasons probably. 24 Embarrassment.</p> <p>25 Q. You could get fired probably. Right?</p>	<p style="text-align: right;">Page 277</p> <p>1 children, not my job.</p> <p>2 Q. So the following day you called HR 3 and said, I want to take FMLA leave. Right?</p> <p>4 A. I believe I called Camille Chang 5 Gilmore. I believe I spoke to her and said, I have 6 a drinking problem or I'm an alcoholic. Her 7 response to me was, admitting you have a problem is 8 the first step, and we want you to go get help.</p> <p>9 Q. Okay. Did you ask for FMLA leave or 10 did she say, hey, there's -- you can apply for FMLA 11 and it's a covered leave?</p> <p>12 A. I didn't know that that was what they 13 called it, but she had guided me in the direction of 14 what to go -- what to go do when you're going to go 15 try to get help.</p> <p>16 Q. So I think I just -- for the record, 17 the day that you were arrested for the DWI was a 18 Thursday. Right?</p> <p>19 A. I'm trying to remember exactly. I 20 believe it was a Thursday.</p> <p>21 Q. Okay. So then the next day where you 22 would have called Gail would have been a Friday?</p> <p>23 A. If I called her the next day, yeah, 24 Friday's usually right after Thursday.</p> <p>25 Q. And Gail -- I'm sorry.</p>

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<p style="text-align: right;">Page 290</p> <p>1 not have participated in those calls if you were 2 gone for an extended period of time because of a 3 leave. Right? 4 A. I don't know whether she did or she 5 didn't. 6 Q. And you don't know what custom is. 7 Right? 8 A. What's customary is that the 9 senior -- or the vice president of the area is the 10 one that steps in, because he's supposed to be in 11 command of that business. 12 Q. And if somebody is out for an 13 extended leave? 14 A. I don't know for an extended leave. 15 I don't know the process of what they've done and I 16 wasn't on any of the calls, so I don't know what 17 they did. 18 Q. Do you know of any regional managers 19 that took time off in excess of a month? 20 A. I don't. 21 Q. Okay. Do you know of any other 22 Boston Scientific employees that took leave to go to 23 treatment? 24 A. I personally don't, no. 25 Q. Are you aware of any?</p>	<p style="text-align: right;">Page 292</p> <p>1 A. Are you saying one of my subordinates 2 was intoxicated? 3 Q. Anybody. A conference call, a sales 4 call where somebody is talking and they're clearly 5 drunk? 6 A. Not -- not that I can recall. 7 Q. So you returned to work from your 8 treatment, your leave of absence on April 13th or 9 so? 10 A. Can I get a calendar out and take a 11 look? 12 Q. Sure. 13 A. So we're in '15. So April '15. I 14 believe I came home on a Friday, which probably 15 would have been the 10th. And I think I returned -- 16 I'm sure you have this information. I think I 17 returned the 14th or 15th of April. 18 Q. Okay. 19 A. Again, I'm not exactly sure of the 20 day. 21 Q. But you do recall you didn't come to 22 work immediately the following Monday. You took 23 some time? 24 A. I did not. I took some time to get 25 settled, and I had some personal things I needed to</p>
<p style="text-align: right;">Page 291</p> <p>1 A. I am not aware of any. 2 Q. Are you aware of any Boston 3 Scientific employees who were arrested for a DWI 4 during the workday? 5 A. I don't have any knowledge of that. 6 Q. Are you aware of any Boston 7 Scientific employees who received repeated 8 counseling for inappropriate behavior and poor 9 judgment as a result of drinking? 10 A. Those are confidential, so no, I 11 don't have any knowledge of that. 12 Q. Did you ever hear of any other Boston 13 Scientific employees who were intoxicated on a work 14 call? 15 A. Again, I wouldn't have any knowledge 16 of that. They're privileged documents, so they're 17 not shared with everyone. 18 Q. You have personally not been involved 19 in a call where somebody was drunk? 20 A. I personally have not been involved 21 in a call where somebody was reprimanded. 22 Q. Where somebody was what? 23 A. Reprimanded. 24 Q. Did you personally participate in a 25 call where somebody was intoxicated?</p>	<p style="text-align: right;">Page 293</p> <p>1 deal with. 2 Q. What personal things did you have to 3 deal with? 4 A. Like I said, my kids were my 5 priority, and I wanted to find out what the 6 situation was going to be with them when I got home. 7 Q. While you were in treatment, did you 8 have any communication with the outside world? 9 A. I did. 10 Q. What's that? 11 A. I did. 12 Q. Okay. Did you communicate with 13 anybody at Boston Scientific? 14 A. Tom Donlan was still at Boston 15 Scientific at that point. 16 Q. Okay. 17 A. And I communicated with Ebony Travis. 18 Q. Anybody else? 19 A. I think I might have communicated 20 with Joe Peabody and Tom Donlan -- or Tom Garrett on 21 my team, just giving them an update that things were 22 okay. And I believe Ed Rush, who was -- who worked 23 for me as a subordinate. There was an e-mail that I 24 responded to. It was a simple response. I forget 25 the nature of the e-mail, but it was just kind of an</p>

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<p style="text-align: right;">Page 294</p> <p>1 approval e-mail. And quickly got an e-mail from 2 Michele DeCoux, we'd rather you not be involved in 3 e-mails, get better. Something like that. 4 Q. Yeah. Okay. So the communication 5 with Joe and Tom was just kind of hey, things are 6 going well, I'm hanging in there? 7 A. We had a personal relationship. 8 Yeah. They wanted to know how it was going, you 9 know, what it was like, that type of thing, are you 10 okay. 11 Q. How about Ebony, why were you 12 communicating with her? 13 A. So Ebony Travis was a compliance 14 officer at Boston Scientific. She shared with me 15 her feelings about a lot of the things that were 16 going on at Boston Scientific at that point, things 17 like investigation of the white party that Sam 18 threw, things like investigations about Sam Conaway 19 in his room having parties. And I think her direct 20 quote to me was, they're really coming after you 21 hard. So I think she was in contact with people 22 like Lynn Prust and Michele DeCoux, but I'm not 23 positive about that. 24 Q. Did you call her or did she reach out 25 to you?</p>	<p style="text-align: right;">Page 296</p> <p>1 going after Tom Garrett really hard because Tom was 2 named in that sexual harassment suit. 3 Q. She told you the reason he's going 4 after Tom is because Tom was named? 5 A. I don't know whether she specifically 6 said about the suit, but she's like, I don't know 7 what's going on, but they're really going after Tom 8 Garrett hard. 9 Q. Okay. Did she give you her opinion 10 as to why any of this was happening? 11 A. I don't recall if it was so much her 12 opinion as it was she didn't understand why all this 13 was -- was happening. 14 Q. Where is she located? 15 A. I believe she lives in Dallas. I'm 16 not positive of that. 17 Q. Did you tell her, well, your side of 18 things as far as what you told Lynn and what Lynn 19 had asked you? 20 A. No. I don't I think went into 21 specifics about that. My assumption is she probably 22 knew it because Lynn was sharing everything else 23 with her. 24 Q. Did you tell her about your DWI? 25 A. I did not.</p>
<p style="text-align: right;">Page 295</p> <p>1 A. She ended up reaching out to me, and 2 I think back and forth we had talked a little bit. 3 Q. And was it e-mail or -- 4 A. No. Phone calls. 5 Q. Phone calls? 6 A. Yes. 7 Q. Got it. Is she still at Boston 8 Scientific? 9 A. She is. 10 Q. Okay. What did she say about -- what 11 were her feelings about things going on? 12 A. Her feelings were she was -- she had 13 worked with Sam in the past at his previous 14 companies. She was well aware of his inappropriate 15 behavior and that it was very frequent. And she 16 made me aware of the fact, because she had 17 conversations with people, that Sam and Gary were 18 making accusations against me that were going to be 19 investigated or had been investigated, one or the 20 other. 21 Q. And did she tell you who was being 22 talked to and what people were saying? 23 A. She gave me -- she mostly discussed 24 Sam and Gary. I can't recall exactly who she talked 25 to, but she also gave me information that Gary was</p>	<p style="text-align: right;">Page 297</p> <p>1 Q. Why not? 2 A. Again, you know, not something I'm 3 proud to talk about, so I didn't share it with 4 anyone. 5 Q. Because you knew if you told her, 6 she'd be obliged to communicate it? 7 A. I don't know whether she would have 8 communicated that or not, because clearly there's 9 many things that we discussed that she didn't 10 communicate with Boston Scientific -- 11 Q. What else? 12 A. -- human resources. 13 Well, exactly what I'm telling you. 14 I don't think she believed -- I don't believe she 15 told them that she was having regular conversations 16 with myself and Tom Donlan. 17 Q. What did you tell her that you don't 18 think she communicated? 19 A. I don't think she communicated that 20 she was having discussions about, you know, what's 21 going on behind the scenes at Boston Scientific 22 human resources about me. I don't think she would 23 have readily shared that with anyone. 24 Q. Well, she's not communicating 25 information they didn't already know of. She's</p>

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<p style="text-align: right;">Page 298</p> <p>1 telling you just what she heard from them. Right?</p> <p>2 A. She's telling me, right, her</p> <p>3 discussions with Lynn Prust and Michele DeCoux.</p> <p>4 Q. Okay.</p> <p>5 A. Right. And so she was sharing the</p> <p>6 information that, you know, I was not always privy</p> <p>7 to. Right? In Lynn's question she doesn't clearly</p> <p>8 come out and say how she found things out.</p> <p>9 Q. So you are in -- was Ebony telling</p> <p>10 you how things were discovered?</p> <p>11 A. At times, yes.</p> <p>12 Q. What did she tell you?</p> <p>13 A. I don't recall exactly. She had told</p> <p>14 me -- and the one specific thing I do remember is</p> <p>15 that Sam and Gary were making a lot of accusations</p> <p>16 about me.</p> <p>17 Q. Did she tell you that Sam and Gary</p> <p>18 raised the complaint about Jeannette Bankes?</p> <p>19 A. No, she didn't tell me that.</p> <p>20 Q. Did she you tell Jeannette --</p> <p>21 A. I never heard Jeannette from her.</p> <p>22 She did tell me specifically when and where that</p> <p>23 claim generated from and what night. And so I went</p> <p>24 back and retraced where it would have come from.</p> <p>25 Q. And that's something you didn't know</p>	<p style="text-align: right;">Page 300</p> <p>1 that he was.</p> <p>2 BY MR. KNAPP:</p> <p>3 Q. What -- tell me about your</p> <p>4 conversation with Tom Donlan.</p> <p>5 A. Tom Donlan ended up, you know, being</p> <p>6 a very good friend, checking in, finding out how I</p> <p>7 was each day, supporting me.</p> <p>8 Q. So let me go back to Ebony.</p> <p>9 All of this communication with her</p> <p>10 was on the phone?</p> <p>11 A. Oh, yeah.</p> <p>12 Q. None of it was text or e-mail?</p> <p>13 A. No.</p> <p>14 Q. And the same with the others?</p> <p>15 A. Yeah, yeah. You know, at that point,</p> <p>16 that's what I recall, that most of it was a quick</p> <p>17 phone call.</p> <p>18 Q. So when you got back to work on the</p> <p>19 14th or 15th, Lynn reached out to you again to</p> <p>20 continue her investigation. Right?</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall telling Lynn that you</p> <p>23 had called Kevin Ballinger and told him what Sam</p> <p>24 Conaway had said at a manager/director meeting about</p> <p>25 you, we hope he gets better and he was shocked?</p>
<p style="text-align: right;">Page 299</p> <p>1 before?</p> <p>2 A. I did not know before.</p> <p>3 Q. Had you been asked about -- oh, yeah,</p> <p>4 you were asked the week of your DWI about this.</p> <p>5 Right?</p> <p>6 A. I think so, yeah. And I don't think</p> <p>7 she specified a name. She just was vague about did</p> <p>8 I hug and kiss anyone at the national sales meeting.</p> <p>9 Q. So she didn't disclose to you</p> <p>10 anything that Lynn Prust or Michele DeCoux didn't</p> <p>11 already know, to your knowledge?</p> <p>12 A. That they already knew?</p> <p>13 Q. Yeah.</p> <p>14 A. I don't know what they already knew.</p> <p>15 My guess is they knew.</p> <p>16 Q. Everything she was telling you is</p> <p>17 what she learned from Lynn and Michele. Right?</p> <p>18 A. I believe so, yes. I don't know</p> <p>19 whether she had specific discussions with Sam</p> <p>20 Conaway, because they were friends as well.</p> <p>21 Q. Okay.</p> <p>22 THE VIDEOGRAPHER: Excuse me,</p> <p>23 Counsel.</p> <p>24 THE WITNESS: She also offered her</p> <p>25 opinion on Gary Lickovitch and the type of person</p>	<p style="text-align: right;">Page 301</p> <p>1 A. I read through that, and Lynn Prust</p> <p>2 recorded that incorrectly. I had left Kevin a</p> <p>3 message about that. And no, obviously I didn't say</p> <p>4 that I spoke to Kevin Ballinger directly. That</p> <p>5 would have been extremely easy for her to find out.</p> <p>6 Kevin never called me back. But I remember the end</p> <p>7 of my message pleading with Kevin to be the standup</p> <p>8 guy, I thought he was a standup guy, and please be</p> <p>9 the standup guy that you are and realize that these</p> <p>10 managers are doing the wrong thing.</p> <p>11 Q. So if Lynn recalled or her</p> <p>12 contemporaneous notes say that not only did you call</p> <p>13 Kevin but Kevin was shocked, that Michele did not</p> <p>14 record it -- that would -- you're claiming you</p> <p>15 didn't say that?</p> <p>16 A. Kevin will be shocked. I don't know</p> <p>17 what exactly I said there, but I found a lot of</p> <p>18 inconsistencies in Lynn Prust's notes, frankly.</p> <p>19 Q. Right. It seems to be a theme with</p> <p>20 that today.</p> <p>21 You also told Lynn that you talked to</p> <p>22 Kevin about Gary Lickovitch. Right?</p> <p>23 A. I don't recall that.</p> <p>24 Q. And that not only did you tell him,</p> <p>25 but that Kevin responded and said, I'll take care of</p>

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<p style="text-align: right;">Page 302</p> <p>1 that?</p> <p>2 A. I didn't say that, and I've already</p> <p>3 answered the question that I never spoke directly to</p> <p>4 Kevin Ballinger.</p> <p>5 Q. So if you had told Lynn that you</p> <p>6 spoke to Kevin and Kevin said certain things to you,</p> <p>7 that would have been not true. Correct?</p> <p>8 A. That would have been not true if I</p> <p>9 had told her that.</p> <p>10 Q. Do you remember telling her that Sam</p> <p>11 Conaway is a scumbag?</p> <p>12 A. I don't remember if I used those</p> <p>13 words, but at this point I was so frustrated with</p> <p>14 compliance.</p> <p>15 Q. Do you recall telling her that Gary</p> <p>16 should be fired?</p> <p>17 A. I don't recall telling her that, no.</p> <p>18 Q. Do you recall saying that you have</p> <p>19 information on your phone in which Sam asked you for</p> <p>20 a girl's number and texted you five times?</p> <p>21 A. I did tell her that.</p> <p>22 Q. Okay. And you'd forward that to her?</p> <p>23 A. I did. And we've already covered</p> <p>24 this, that I didn't have it in my phone anymore, so</p> <p>25 I assume that she could have gone to the company</p>	<p style="text-align: right;">Page 304</p> <p>1 that would have been untrue. Right?</p> <p>2 A. I got the dates mixed up that she was</p> <p>3 asking about. But when she asked about specific</p> <p>4 events, she never said DUI. She asked about what</p> <p>5 specific event happened that day. I was the one</p> <p>6 that came out and said DUI.</p> <p>7 Q. Oh, do you remember actually telling</p> <p>8 her you don't remember what you were doing that day?</p> <p>9 A. Immediately that's exactly what I</p> <p>10 told her.</p> <p>11 Q. First you said you were on a plane.</p> <p>12 Right?</p> <p>13 A. Right.</p> <p>14 Q. Then you said you don't know what you</p> <p>15 were doing that day. Right?</p> <p>16 A. I thought she meant work wise, and</p> <p>17 then she said personal to you and then I recalled.</p> <p>18 As we've gone through, I'm not</p> <p>19 excellent on dates, so I wasn't sure what dates she</p> <p>20 was talking about.</p> <p>21 Q. So because she did say what were you</p> <p>22 personally doing that day, you didn't tell her about</p> <p>23 the DWI?</p> <p>24 A. Again, it didn't occur to me that</p> <p>25 that was the date, but once we got down to it, I</p>
<p style="text-align: right;">Page 303</p> <p>1 that runs Boston Scientific's phones and pull it if</p> <p>2 she was interested.</p> <p>3 Q. And she called you a second time that</p> <p>4 week. Right?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you remember her calling you and</p> <p>7 asking you about your DWI?</p> <p>8 A. Yes.</p> <p>9 Q. Because she heard about it?</p> <p>10 A. She had.</p> <p>11 Q. And up to that point, you had not</p> <p>12 told anybody at Boston Scientific about it. Right?</p> <p>13 A. That's correct.</p> <p>14 Q. And your first response is to tell</p> <p>15 her that you were on a plane that day. Right?</p> <p>16 A. I don't know what I originally told</p> <p>17 her. I think I got it incorrect, because she</p> <p>18 reiterated and went back to the day and started</p> <p>19 talking about what personally happened to you. And</p> <p>20 I got the plane mixed up. I went the next day to</p> <p>21 the treatment facility or the day after. I got the</p> <p>22 dates mixed up that she was talking about when I</p> <p>23 said I was on a plane.</p> <p>24 Q. To the extent you would have told her</p> <p>25 nothing happened that day because I was on a plane,</p>	<p style="text-align: right;">Page 305</p> <p>1 remembered that was the date of the DUI. And I</p> <p>2 admitted it to her.</p> <p>3 Q. That's a pretty significant date,</p> <p>4 isn't it?</p> <p>5 A. I didn't remember the -- the event</p> <p>6 was pretty significant. The date is irrelevant.</p> <p>7 Q. Do you remember the date you started</p> <p>8 treatment?</p> <p>9 A. I believe I started it the 13th.</p> <p>10 Q. Did you -- you told her you were --</p> <p>11 you had been home working that day. Right?</p> <p>12 A. In the morning, yes.</p> <p>13 Q. Okay. And you wouldn't tell her how</p> <p>14 much you had been drinking. Right?</p> <p>15 A. At that point, I was instructed not</p> <p>16 to talk about it.</p> <p>17 Q. By whom?</p> <p>18 A. By my attorney for the DUI.</p> <p>19 Q. And who was that?</p> <p>20 A. His name is Evan Levow.</p> <p>21 Q. And where is he located?</p> <p>22 A. I believe he's out of Haddonfield,</p> <p>23 New Jersey.</p> <p>24 Q. Do you recall after you got back from</p> <p>25 treatment in April, your wife accused you of being</p>

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<p style="text-align: right;">Page 306</p> <p>1 at a softball practice of your kids drunk?</p> <p>2 A. Yeah. My wife accused me of a lot of</p> <p>3 things when I got back from treatment.</p> <p>4 Q. Was that not true?</p> <p>5 A. It was not true at all.</p> <p>6 Q. Okay. On Friday of that week that</p> <p>7 you came back, you were told that you were going to</p> <p>8 have to be at a meeting the next Monday morning with</p> <p>9 Sam and Michele. Right?</p> <p>10 A. That's correct.</p> <p>11 Q. And you had a pretty good idea that</p> <p>12 you were going to be fired. Right?</p> <p>13 A. I had a concern, yes.</p> <p>14 Q. And you thought it was because of</p> <p>15 your -- they found out about your DWI. Right?</p> <p>16 A. I knew they had found out at that</p> <p>17 point. I had spoken to Lynn Prust about it.</p> <p>18 Q. What's that?</p> <p>19 A. I had spoken to Lynn about it. I was</p> <p>20 unsure whether they would fire me because I was not</p> <p>21 found guilty of anything at that point.</p> <p>22 Q. Well --</p> <p>23 A. And I also felt that I had completed</p> <p>24 a rehabilitation program, so maybe they just wanted</p> <p>25 to discuss with me going forward what their</p>	<p style="text-align: right;">Page 308</p> <p>1 Q. And did you have your cell phone with</p> <p>2 you --</p> <p>3 A. The whole time.</p> <p>4 Q. -- at treatment?</p> <p>5 So she called you on your cell phone?</p> <p>6 A. Yes. We spoke on the cell phone.</p> <p>7 Q. I'm sorry?</p> <p>8 A. Yes. We spoke on my cell phone.</p> <p>9 Q. And you said she initiated the first</p> <p>10 call?</p> <p>11 A. I believe the first call was</p> <p>12 initiated by her. Tom Donlan had asked her to reach</p> <p>13 out to me.</p> <p>14 Q. Okay. Because she talked to Tom</p> <p>15 about this?</p> <p>16 A. She had talked to Tom about his case.</p> <p>17 They were friends.</p> <p>18 Q. Okay. And then after that first</p> <p>19 call, did you call her after that or did she</p> <p>20 initiate every call?</p> <p>21 A. I'm not sure whether I called her or</p> <p>22 I called Tom and asked her to call me.</p> <p>23 Q. Okay.</p> <p>24 A. But I could have called her at -- you</p> <p>25 know, at one of those times.</p>
<p style="text-align: right;">Page 307</p> <p>1 expectations were.</p> <p>2 MR. KNAPP: Let's take a break.</p> <p>3 THE VIDEOGRAPHER: This concludes</p> <p>4 this video of the deposition. The time is 3:26 p.m.</p> <p>5 We are off the record.</p> <p>6 - - -</p> <p>7 (A recess was taken from 3:26 p.m.</p> <p>8 to 3:40 p.m.)</p> <p>9 - - -</p> <p>10 (Deposition Exhibit No. Simons-34,</p> <p>11 E-mail chain, top one dated March 10,</p> <p>12 2015, Bates stamped BSC00001064 and</p> <p>13 BSC00001065 and BSC00000812 and</p> <p>14 BSC00000813, was marked for</p> <p>15 identification.)</p> <p>16 - - -</p> <p>17 THE VIDEOGRAPHER: This begins Disk 4</p> <p>18 of the deposition. The time is 3:40 p.m. We are on</p> <p>19 the record.</p> <p>20 BY MR. KNAPP:</p> <p>21 Q. Mr. Simons, going back to these --</p> <p>22 your testimony about Ebony Travis, how many times</p> <p>23 did you talk to her while you were on --</p> <p>24 A. I don't recall. I can guess in a</p> <p>25 range of three. Could have been plus or minus.</p>	<p style="text-align: right;">Page 309</p> <p>1 Q. All right.</p> <p>2 A. I remember we talked on her private</p> <p>3 cell phone, not Boston Scientific's cell phone.</p> <p>4 Q. Okay. Do you remember what time of</p> <p>5 day?</p> <p>6 A. I don't.</p> <p>7 Q. Going back to Exhibit 34 -- or going</p> <p>8 to Exhibit 34, these are notes that Lynn Prust took</p> <p>9 of a call with you on March 11th about, or among</p> <p>10 other things, she you claims you said you're</p> <p>11 recording it.</p> <p>12 A. Uh-huh.</p> <p>13 Q. And the first two pages is an e-mail</p> <p>14 exchange between you and Lynn on March 10th.</p> <p>15 Do you remember that, where she said,</p> <p>16 give me the photo and text messages?</p> <p>17 A. Yes.</p> <p>18 Q. And your response was, "I will not."</p> <p>19 Correct?</p> <p>20 A. I cannot.</p> <p>21 Q. It says, "I will not," does it not?</p> <p>22 A. Okay. It says, "I will not."</p> <p>23 Meaning -- I don't know what I meant. Meaning I</p> <p>24 will not be able to.</p> <p>25 Q. That's not what you said, though.</p>

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<p style="text-align: right;">Page 310</p> <p>1 Right?</p> <p>2 A. Possibly. No. It's clearly written</p> <p>3 what I said.</p> <p>4 Q. So on Friday the 17th, you know that</p> <p>5 there's going to be this meeting with Sam and</p> <p>6 Michele on Monday.</p> <p>7 Do you recall that weekend that you</p> <p>8 and Anna broke up?</p> <p>9 A. It's very possible.</p> <p>10 - - -</p> <p>11 (Deposition Exhibit No. Simons-35,</p> <p>12 E-mail chain, top one dated 4/19/2015, 1</p> <p>13 page, was marked for identification.)</p> <p>14 - - -</p> <p>15 BY MR. KNAPP:</p> <p>16 Q. It's an e-mail exchange between you</p> <p>17 and Anna on April 18th and 19th. You write on the</p> <p>18 top, "You are what you are and I loved you for that.</p> <p>19 I'm sorry for what I'm about to do to you, but it is</p> <p>20 just and right. I will see you in court Anna.</p> <p>21 Nothing left to lose."</p> <p>22 What's that all about?</p> <p>23 A. I'm not positive if it's about</p> <p>24 getting the ring back that I had engaged her. If</p> <p>25 she had broken it off, I think I was entitled to get</p>	<p style="text-align: right;">Page 312</p> <p>1 identification.)</p> <p>2 - - -</p> <p>3 BY MR. KNAPP:</p> <p>4 Q. This is -- Exhibit 36, Mr. Simons, is</p> <p>5 an e-mail from you to Michele DeCoux on April 19th</p> <p>6 saying, "I will file tomorrow but I feel stress and</p> <p>7 I'm going to go out for help on FLMA...tomorrow."</p> <p>8 A. Yeah. At this point I was feeling a</p> <p>9 great deal of stress from the concern of being</p> <p>10 dismissed from Boston Scientific and really was</p> <p>11 unsure what to do.</p> <p>12 Q. Were you trying to invoke the FMLA to</p> <p>13 protect you from adverse consequences for things</p> <p>14 that you did?</p> <p>15 A. I was trying to invoke the FMLA so I</p> <p>16 could sort things out in my head and figure out what</p> <p>17 I was doing. I think FMLA, one of the benefits of</p> <p>18 it is if you're having stress in the workplace, that</p> <p>19 you can take a break and get your life back in</p> <p>20 order.</p> <p>21 Q. You were hoping by doing that it</p> <p>22 could delay your termination. Right?</p> <p>23 A. Well, it could -- that's one benefit</p> <p>24 of it, but it could also give me time to reorganize</p> <p>25 with my family and get my kids' visitation back in</p>
<p style="text-align: right;">Page 311</p> <p>1 the engagement ring back.</p> <p>2 Q. Okay.</p> <p>3 A. But Anna and I had an on again/off</p> <p>4 again relationship at this point, because obviously</p> <p>5 my life had been a little tumultuous at that time,</p> <p>6 as hers was as well.</p> <p>7 Q. You say, "You do what you do to</p> <p>8 protect your family...I need to do the same."</p> <p>9 Is that reference to what you were</p> <p>10 going to see her in court about?</p> <p>11 A. I don't know whether it's reference</p> <p>12 to telling my girls about -- I don't recall what</p> <p>13 it's in reference to. We clearly were having</p> <p>14 offline conversations from the e-mails.</p> <p>15 Q. "I just won't live my life knowing</p> <p>16 how many lives you and your buddy have destroyed and</p> <p>17 never paid a consequence."</p> <p>18 Who are you referring to there --</p> <p>19 A. I don't recall.</p> <p>20 Q. -- when you say you and your buddy?</p> <p>21 A. I don't recall.</p> <p>22 - - -</p> <p>23 (Deposition Exhibit No. Simons-36,</p> <p>24 E-mail chain, top one dated 4/19/2015,</p> <p>25 Bates stamped BSC00001104, was marked for</p>	<p style="text-align: right;">Page 313</p> <p>1 order.</p> <p>2 - - -</p> <p>3 (Deposition Exhibit No. Simons-37,</p> <p>4 E-mail chain, top one dated 4/17/2015,</p> <p>5 Bates stamped BSC00001968 through</p> <p>6 BSC00001971, was marked for</p> <p>7 identification.)</p> <p>8 - - -</p> <p>9 BY MR. KNAPP:</p> <p>10 Q. 37 is an e-mail exchange between you</p> <p>11 and Lacia on April 16th and 17th. This is when</p> <p>12 she's accusing you of drinking again. Right?</p> <p>13 A. Yes. It's a common occurrence.</p> <p>14 Q. On April 17th at 12:06, the first</p> <p>15 e-mail on page 1, your -- you say, "I'm also about</p> <p>16 to lose my job so no money is no money."</p> <p>17 Are you referring to the upcoming</p> <p>18 meeting with Sam and Michele?</p> <p>19 A. That was my concern, from the</p> <p>20 information I've got, if they're trying to make a</p> <p>21 case against me, it was my concern that their goal</p> <p>22 was to terminate me.</p> <p>23 Q. They didn't have to make a case</p> <p>24 against you, did they? Didn't you make a case for</p> <p>25 yourself?</p>

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<p style="text-align: right;">Page 314</p> <p>1 MR. MARTIN: Objection,</p> <p>2 argumentative.</p> <p>3 THE WITNESS: I believe they did</p> <p>4 their best to make a case against me.</p> <p>5 BY MR. KNAPP:</p> <p>6 Q. Didn't you make a case for yourself?</p> <p>7 MR. MARTIN: Same objection. You're</p> <p>8 still arguing with the witness. It's not an</p> <p>9 appropriate question.</p> <p>10 THE WITNESS: I don't believe I made</p> <p>11 a case for myself.</p> <p>12 - - -</p> <p>13 (Deposition Exhibit No. Simons-38,</p> <p>14 E-mail chain, top one dated 4/19/2015,</p> <p>15 Bates stamped BSC00001963 through</p> <p>16 BSC00001965, was marked for</p> <p>17 identification.)</p> <p>18 - - -</p> <p>19 BY MR. KNAPP:</p> <p>20 Q. Still that weekend there's more</p> <p>21 e-mails between you and Lacia.</p> <p>22 So on Sunday, April 19th, on the</p> <p>23 second page bottom, you -- argument back and forth.</p> <p>24 You say, "You think you know it all. When I lose my</p> <p>25 job Monday. Support is based on income. Mine will</p>	<p style="text-align: right;">Page 316</p> <p>1 with Kevin Ballinger in 2015?</p> <p>2 A. Yes.</p> <p>3 Q. How many?</p> <p>4 A. Not in 2015, no.</p> <p>5 Q. Okay.</p> <p>6 A. I believe in '14 was the last time I</p> <p>7 spoke to him.</p> <p>8 Q. And then 10:07 a.m. on April 19th you</p> <p>9 say, "Someone called BSC and told them about the</p> <p>10 DUI. I am done at this company. They're coming to</p> <p>11 fire me Monday."</p> <p>12 Who told them about the DUI? You?</p> <p>13 A. I still don't know who told them</p> <p>14 about the DUI, because Lynn Prust posed the question</p> <p>15 to me, so clearly she knew about the DUI from</p> <p>16 someone. I still to this day don't know who told</p> <p>17 BSC about the DUI.</p> <p>18 Q. So on April 19th you're blaming your</p> <p>19 wife for losing your job. Right?</p> <p>20 A. On April 19th I'm blaming my wife for</p> <p>21 a lot of stress in my life, yes.</p> <p>22 Q. It's her fault for telling them about</p> <p>23 the DUI, because if you kept it separate -- secret,</p> <p>24 they couldn't have fired you for it. Right?</p> <p>25 A. You know, I didn't know where the DUI</p>
<p style="text-align: right;">Page 315</p> <p>1 be zero."</p> <p>2 So again, telling her you're going to</p> <p>3 be losing your job. Right?</p> <p>4 A. I had a concern about that.</p> <p>5 Q. And she replies and says, "I thought</p> <p>6 Kevin" Ballinger "called you to tell you you weren't</p> <p>7 getting fired."</p> <p>8 Did you tell her that?</p> <p>9 A. I did not tell her that, to my</p> <p>10 recollection.</p> <p>11 Q. Why would she say you did?</p> <p>12 A. You can see with the multiple amount</p> <p>13 of e-mails, I don't recall everything that we had a</p> <p>14 discussion about.</p> <p>15 Q. So you're telling your wife that</p> <p>16 you're talking to Kevin Ballinger, and you're</p> <p>17 telling Lynn Prust you're talking to Kevin</p> <p>18 Ballinger. Correct?</p> <p>19 A. I did not tell Lynn Prust I talked to</p> <p>20 Kevin Ballinger.</p> <p>21 Q. Did you tell your wife that?</p> <p>22 A. No. Not that I recall.</p> <p>23 Q. They're both making that up?</p> <p>24 A. Not that I recall.</p> <p>25 Q. Did you have any conversations at all</p>	<p style="text-align: right;">Page 317</p> <p>1 was going, whether I was going to be convicted of it</p> <p>2 or not. So I don't put it past my ex-wife to do</p> <p>3 something to make my life worse.</p> <p>4 Q. The first page of your e-mail to her</p> <p>5 at 1:54, "And Lacia, it really happened. Someone</p> <p>6 gave the info to BSC and said on March 12th I was</p> <p>7 charged with a DUI. Apparently if you use company</p> <p>8 equipment while intoxicated it's a violation."</p> <p>9 Did you not know that?</p> <p>10 A. I did not know that. But the car is</p> <p>11 my own, not a BSC equipment.</p> <p>12 Q. And then later you say, "Maybe my</p> <p>13 girls will benefit from me passing," so were you</p> <p>14 contemplating suicide at this point?</p> <p>15 A. I was in a deep depression when I got</p> <p>16 back and wasn't allowed to see my girls, and the</p> <p>17 stress that had been caused by compliance being</p> <p>18 called on such a regular basis, yes, put me into a</p> <p>19 deep depression.</p> <p>20 Q. So it's not your fault, it's Boston</p> <p>21 Scientific's fault?</p> <p>22 A. The actions were my fault; the stress</p> <p>23 was caused by Boston Scientific in their relentless</p> <p>24 effort to -- to find out information and make things</p> <p>25 up about me.</p>

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<p style="text-align: right;">Page 318</p> <p>1 Q. Was the DWI made up?</p> <p>2 A. No.</p> <p>3 - - -</p> <p>4 (Deposition Exhibit No. Simons-39,</p> <p>5 Text Messages, Bates stamped BSC00000961</p> <p>6 through BSC00000964, was marked for</p> <p>7 identification.)</p> <p>8 - - -</p> <p>9 BY MR. KNAPP:</p> <p>10 Q. So the morning of your meeting with</p> <p>11 Sam and Michele, you start texting Sam and telling</p> <p>12 him you're not going to go. Right?</p> <p>13 A. Yes. Again, just the result of</p> <p>14 extreme amount of stress. And I did end up going.</p> <p>15 Q. And initially you say, "Unless I know</p> <p>16 who will be in ascendance," I think you mean</p> <p>17 attendance, "I'm not coming." Right?</p> <p>18 A. Initially I said that.</p> <p>19 Q. And then you say, "I feel stressed</p> <p>20 from this investigation. I have to leave on FMLA</p> <p>21 again." Right?</p> <p>22 A. That was my thought, to get myself</p> <p>23 together, from whether it's personal or business,</p> <p>24 that I would be more productive as an employee of</p> <p>25 Boston Scientific if I handled the stress things in</p>	<p style="text-align: right;">Page 320</p> <p>1 Q. You're telling the director of sales</p> <p>2 for that division of Boston Scientific to grow up</p> <p>3 and man up?</p> <p>4 A. I did.</p> <p>5 Q. Do you think that was a wise thing to</p> <p>6 do?</p> <p>7 A. No.</p> <p>8 Q. Would you tolerate that from a</p> <p>9 subordinate of yours?</p> <p>10 A. I would not tolerate that from a</p> <p>11 subordinate of mine, no.</p> <p>12 Q. So you go to the meeting.</p> <p>13 And who is at this meeting?</p> <p>14 A. To my knowledge, were Camille Chang</p> <p>15 Gilmore and Sam Conaway.</p> <p>16 Q. Was Michele there?</p> <p>17 A. No.</p> <p>18 Q. Okay. And who -- where was the</p> <p>19 meeting?</p> <p>20 A. It was at a hotel downtown in</p> <p>21 Manhattan.</p> <p>22 Q. And where in the hotel?</p> <p>23 A. In the hotel lobby or bar off the</p> <p>24 lobby.</p> <p>25 Q. And tell me what you can recall in</p>
<p style="text-align: right;">Page 319</p> <p>1 my life.</p> <p>2 Q. Did you tell anybody at that time, I</p> <p>3 have depression?</p> <p>4 A. No.</p> <p>5 Q. Okay. Did you -- why didn't you</p> <p>6 proceed with your FMLA leave request?</p> <p>7 A. Because, frankly, I realized it was a</p> <p>8 knee jerk reaction and I really needed to face the</p> <p>9 company and see what they thought the result was</p> <p>10 going to be. I wasn't positive I was being fired.</p> <p>11 In fact, I held out hope that because I had gone to</p> <p>12 get treatment, that they would stand behind me.</p> <p>13 Q. Then the third page you say, "Have a</p> <p>14 good breakfast I am not coming. To you unless you</p> <p>15 can be honest once" and for all and "tell me whose</p> <p>16 there. You're acting like the laundry guy than the</p> <p>17 boss. Grow up and Man up." Right?</p> <p>18 A. He wouldn't respond to my text</p> <p>19 messages, and I thought they were simple requests,</p> <p>20 when you're going to a Boston Scientific meeting to</p> <p>21 find out who was going to be there.</p> <p>22 Q. So you're telling -- sorry. Go</p> <p>23 ahead.</p> <p>24 A. Right. And again, to explain my</p> <p>25 frame of mind, I was extremely, you know, upset.</p>	<p style="text-align: right;">Page 321</p> <p>1 that meeting.</p> <p>2 A. So I remember walking in. I was</p> <p>3 surprised that Camille was there, I think. Sam sat</p> <p>4 down. We sat down across from each other. He</p> <p>5 brought up the two performance actions or corrective</p> <p>6 actions that were given to me. And then he followed</p> <p>7 up with, we observed or heard that you were drunk on</p> <p>8 a conference call on February 27th. And then I</p> <p>9 think he finished with, at this time we're going to</p> <p>10 terminate your employment with Boston Scientific.</p> <p>11 And I believe after that, Camille</p> <p>12 handed me a few pieces of paper and said, here's the</p> <p>13 information you need for separation. And then I</p> <p>14 believe Sam patted me on the shoulder.</p> <p>15 I immediately got up to leave, was</p> <p>16 still a little shocked to hear the words. I got up</p> <p>17 to leave, Sam patted me on the back and said, this</p> <p>18 is going to be really hard on you. And I went and</p> <p>19 got in my car and drove home.</p> <p>20 Q. Did he -- he also mentioned the DWI.</p> <p>21 Right?</p> <p>22 A. No, he did not mention the DWI in the</p> <p>23 firing process.</p> <p>24 Q. He didn't say on March 12, 2015 you</p> <p>25 consumed alcohol during work hours?</p>

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<p style="text-align: right;">Page 322</p> <p>1 A. I don't believe he said that, no.</p> <p>2 Q. Is it possible that he did?</p> <p>3 A. No. Because I remember specifically</p> <p>4 that DUI was not one of the things that he</p> <p>5 referenced in my firing.</p> <p>6 Q. Did he read from a script?</p> <p>7 A. No. He had no paper with him to my</p> <p>8 recollection.</p> <p>9 Q. He may have. You don't recall?</p> <p>10 A. I don't recall.</p> <p>11 Q. Did he tell you that you told Lynn</p> <p>12 that you spoke to Kevin Ballinger when you didn't?</p> <p>13 A. I didn't tell him that. I never</p> <p>14 heard -- we never mentioned Kevin Ballinger at that</p> <p>15 meeting at all. In fact, the first time I heard</p> <p>16 that Lynn Prust had looked at Kevin Ballinger was</p> <p>17 yesterday when I looked at notes that we were going</p> <p>18 over.</p> <p>19 Q. Do you recall that he said that you'd</p> <p>20 violated certain policies?</p> <p>21 A. I don't recall.</p> <p>22 Q. Did he tell you, I realize this is</p> <p>23 difficult news for you?</p> <p>24 A. I believe he may have said something</p> <p>25 along those lines.</p>	<p style="text-align: right;">Page 324</p> <p>1 Q. Oh, I'm sorry. Okay. I'm getting</p> <p>2 him confused with somebody else.</p> <p>3 A. Bob McKeefrey is Ryan McKeefrey's</p> <p>4 father.</p> <p>5 Q. Got it.</p> <p>6 - - -</p> <p>7 (Deposition Exhibit No. Simons-40,</p> <p>8 E-mail chain, top one dated 6/29/2015,</p> <p>9 Bates stamped BSC00001349 through</p> <p>10 BSC00001355, was marked for</p> <p>11 identification.)</p> <p>12 - - -</p> <p>13 BY MR. KNAPP:</p> <p>14 Q. Showing you what's been marked as</p> <p>15 Exhibit 40. This is an e-mail from Tom Garrett to</p> <p>16 you on June 29, 2015.</p> <p>17 Do you recall receiving this?</p> <p>18 A. I don't.</p> <p>19 Q. Do you recall why -- first of all,</p> <p>20 what does Rivermine mean, looking at the first page?</p> <p>21 A. Rivermine help desk. That is --</p> <p>22 Rivermine is the cell phone carrier for Boston</p> <p>23 Scientific, the cell phone administrator for Boston</p> <p>24 Scientific. I don't know what they call themselves.</p> <p>25 Q. Why were you looking for the phone</p>
<p style="text-align: right;">Page 323</p> <p>1 Q. Do you recall that February 27th</p> <p>2 conference call that Gary had to text you because</p> <p>3 you weren't there when the call started?</p> <p>4 A. I do recall getting a text from Gary.</p> <p>5 Q. To remind you to come join in on the</p> <p>6 call?</p> <p>7 A. Yes. And that was immediately after</p> <p>8 it started.</p> <p>9 Q. Do you recall in June 2015 you got an</p> <p>10 e-mail from Bob McKeefrey saying, I need a player</p> <p>11 coach for \$275,000 in five regions in the country,</p> <p>12 and you forwarded it on to Jim Toto and Thomas</p> <p>13 Donlan and said, "This is an opportunity, boys"?</p> <p>14 A. I believe so, yes.</p> <p>15 Q. What came of that?</p> <p>16 A. Nothing. I interviewed for the job</p> <p>17 down in DC and subsequently didn't get it.</p> <p>18 Q. And Bob McKeefrey went to work for</p> <p>19 Medcruiters, Inc.?</p> <p>20 A. He's the owner and president of</p> <p>21 Medcruiters, Inc.</p> <p>22 Q. Okay. He left Boston Scientific and</p> <p>23 started that company?</p> <p>24 A. I don't know if Bob ever worked for</p> <p>25 Boston Scientific.</p>	<p style="text-align: right;">Page 325</p> <p>1 number for the Rivermine help desk?</p> <p>2 A. Because I needed to call Rivermine so</p> <p>3 Boston Scientific wasn't in control of my cell phone</p> <p>4 number any longer.</p> <p>5 Q. Okay.</p> <p>6 A. And stop their service.</p> <p>7 Q. And had you asked them for</p> <p>8 information on NYU Medical Center?</p> <p>9 A. I'm not sure why I would have done</p> <p>10 that, because I wasn't working at that point, so I</p> <p>11 don't recall asking them for this.</p> <p>12 Q. Did you wonder why -- I mean, did you</p> <p>13 ask him, why did you send me this?</p> <p>14 A. Again, I don't recall the</p> <p>15 conversation or the context in which I asked for it.</p> <p>16 Q. Were you working at that point?</p> <p>17 A. No, I was not working at that point.</p> <p>18 I can speculate that --</p> <p>19 MR. MARTIN: Don't speculate.</p> <p>20 THE WITNESS: Yeah. I don't know</p> <p>21 why -- I don't know why I would have asked him for</p> <p>22 that.</p> <p>23 BY MR. KNAPP:</p> <p>24 Q. If you look at pages 2 through 4,</p> <p>25 there's a document entitled "NYU Medical Center."</p>

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<p style="text-align: right;">Page 330</p> <p>1 identification.)</p> <p>2 - - -</p> <p>3 BY MR. KNAPP:</p> <p>4 Q. Before we get to Exhibit 41, Jillian,</p> <p>5 as you recall, never told you that Gary asked her to</p> <p>6 sleep with him. Right?</p> <p>7 A. Not to my recollection.</p> <p>8 Q. Asked -- yeah.</p> <p>9 Showing you what's been marked as</p> <p>10 Exhibit 41. Danielle Farbanec replaced you,</p> <p>11 correct, after you were let go?</p> <p>12 A. Not immediately.</p> <p>13 Q. Ultimately?</p> <p>14 A. Ultimately.</p> <p>15 Q. And after you were let go, you sent</p> <p>16 her a text message. Right?</p> <p>17 A. Yes.</p> <p>18 Q. And among other things, you say,</p> <p>19 "Sweety your two faced behavior is going to haunt</p> <p>20 you. MY team hates you. The other managers</p> <p>21 HATE" -- in capital letters -- "you. You better</p> <p>22 watch your mouth because it will soon bury you."</p> <p>23 Why did you send her that text?</p> <p>24 MR. MARTIN: I object. That's not</p> <p>25 the whole text. You only took the second paragraph.</p>	<p style="text-align: right;">Page 332</p> <p>1 A. He wasn't he was fired for doing</p> <p>2 that. He was fired for performance was my</p> <p>3 understanding.</p> <p>4 Q. Okay. What did you mean, it will</p> <p>5 soon bury you?</p> <p>6 A. Meaning if Gary continues to find out</p> <p>7 that you're saying bad things about him, it comes</p> <p>8 back to haunt you. When you gossip about people,</p> <p>9 oftentimes that comes back to bite you.</p> <p>10 Q. No. The only people that are buried</p> <p>11 are dead people. Correct?</p> <p>12 A. That wasn't my intention to threaten</p> <p>13 her in any way.</p> <p>14 Q. Is that true?</p> <p>15 A. Is it what true?</p> <p>16 Q. The only people that get buried are</p> <p>17 dead people?</p> <p>18 A. There's another connotation of</p> <p>19 buried, meaning, you know, bad things happen in your</p> <p>20 career.</p> <p>21 Q. Can you understand how Danielle would</p> <p>22 have found this to be physically threatening to her,</p> <p>23 for you to send her a text saying this is going to</p> <p>24 bury you?</p> <p>25 A. I don't agree with why she would have</p>
<p style="text-align: right;">Page 331</p> <p>1 The first sentence -- two sentences you didn't read,</p> <p>2 which say, "Just got more info. You bad mouthing</p> <p>3 Gary to your 'friends'" and then what you read to</p> <p>4 him was in there. So you didn't read the whole</p> <p>5 text.</p> <p>6 MR. KNAPP: That's absolutely true,</p> <p>7 and there's more to it that we can cover in a</p> <p>8 minute.</p> <p>9 BY MR. KNAPP:</p> <p>10 Q. Why did you send that to her?</p> <p>11 A. Because I was informed from other</p> <p>12 managers at Boston Scientific that at a region</p> <p>13 manager meeting that she had badmouthed me and the</p> <p>14 job that I had done before she took over the region.</p> <p>15 And I just brought it to her attention that she made</p> <p>16 common practice of badmouthing Gary Lickovitch and</p> <p>17 his competency in the role. And I was angry and</p> <p>18 frustrated that someone who I considered a strong</p> <p>19 colleague would have to resort to badmouthing me in</p> <p>20 front of a group of people after I was terminated.</p> <p>21 Q. Who told you she was badmouthing</p> <p>22 Gary?</p> <p>23 A. Jim Toto. And he was at the meeting.</p> <p>24 Q. And he was fired for doing that.</p> <p>25 Right?</p>	<p style="text-align: right;">Page 333</p> <p>1 thought that. There's another context, that you've</p> <p>2 been buried by gossip and rumors.</p> <p>3 Q. You also referred to her as a stupid</p> <p>4 girl. Right?</p> <p>5 A. I clearly did.</p> <p>6 Q. Did you think she was a stupid girl?</p> <p>7 A. Yes. Not because she's a girl,</p> <p>8 because again, she was talking about people in a</p> <p>9 company setting.</p> <p>10 Q. She's not a girl, she's a woman.</p> <p>11 Right?</p> <p>12 A. Correct.</p> <p>13 Q. Do you refer to women as girls</p> <p>14 regularly?</p> <p>15 A. At times. At times I have, yes.</p> <p>16 Q. Were you drinking when you sent this?</p> <p>17 A. No, not to my recollection.</p> <p>18 Q. Is it possible?</p> <p>19 A. No.</p> <p>20 - - -</p> <p>21 (Deposition Exhibit No. Simons-42,</p> <p>22 Text Messages, Bates stamped BSC00001099,</p> <p>23 was marked for identification.)</p> <p>24 - - -</p> <p>25 BY MR. KNAPP:</p>

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<p style="text-align: right;">Page 346</p> <p>1 will it be killed for you?</p> <p>2 A. I will kill it for you is what I</p> <p>3 meant to say. That's a term that we use in sales.</p> <p>4 Q. Did Kev respond?</p> <p>5 A. No.</p> <p>6 Q. And again, you're telling him, I know</p> <p>7 you're letting go of Sam.</p> <p>8 What was your basis for that?</p> <p>9 A. I just heard it through the</p> <p>10 grapevine. And I'm not positive of the source, but</p> <p>11 I had heard it rumored.</p> <p>12 Q. So you kept your BSC laptop for a</p> <p>13 period of time before you returned it. Correct?</p> <p>14 A. Correct.</p> <p>15 Q. Why didn't you return it immediately?</p> <p>16 A. Because it wasn't my obligation to</p> <p>17 collect the equipment from Boston Scientific.</p> <p>18 Protocol is when you're terminated from Boston</p> <p>19 Scientific, that your direct supervisor comes and</p> <p>20 collects all your -- all your Boston Scientific</p> <p>21 equipment. That never happened to me.</p> <p>22 Q. So you kept it and continued to use</p> <p>23 it. Right?</p> <p>24 A. Yes.</p> <p>25 Q. Did you delete any files on it before</p>	<p style="text-align: right;">Page 348</p> <p>1 Q. How about loversee.com?</p> <p>2 A. I don't know that all of those</p> <p>3 websites that I visited there. They kind of link</p> <p>4 into each other and they spam, some of them, but</p> <p>5 maybe I did look at --</p> <p>6 Q. You may have registered at loversee</p> <p>7 as well?</p> <p>8 A. I -- no, I don't believe I did. I</p> <p>9 think when you register at one, they have your</p> <p>10 information at others.</p> <p>11 Q. Did you have an account with</p> <p>12 xmeeting.com?</p> <p>13 A. Not that I recall, but it's possible.</p> <p>14 Q. Did you use internet websites on your</p> <p>15 BSC laptop computer to have hookups with women?</p> <p>16 A. I never -- I never hooked up with any</p> <p>17 women from there.</p> <p>18 Q. Did you seek that?</p> <p>19 A. I looked at what the website was</p> <p>20 about but never had any physical meeting with</p> <p>21 anyone.</p> <p>22 Q. You actually registered, though,</p> <p>23 where you put your e-mail in and you could get --</p> <p>24 A. You put your e-mail in, you get</p> <p>25 entrance into the website and you see what's it</p>
<p style="text-align: right;">Page 347</p> <p>1 you returned it?</p> <p>2 A. I don't recall.</p> <p>3 Q. You may have?</p> <p>4 A. I don't recall.</p> <p>5 Q. Did you try to wipe things?</p> <p>6 A. I don't recall.</p> <p>7 Q. Did you view porn on your BSC laptop?</p> <p>8 A. Yes.</p> <p>9 Q. You understood that was a terminable</p> <p>10 offense?</p> <p>11 A. I've already been terminated.</p> <p>12 Q. Did you understand that was a</p> <p>13 terminable offense?</p> <p>14 A. I did not understand that it was a</p> <p>15 terminable offense.</p> <p>16 Q. Did you view porn on your laptop</p> <p>17 while you were at BSC?</p> <p>18 A. I believe I did.</p> <p>19 Q. What's flirtlocal.com?</p> <p>20 A. No idea. But I probably looked at</p> <p>21 it. It's a website to meet local people.</p> <p>22 Q. Did you actually register with it?</p> <p>23 A. I believe I may have. I don't know.</p> <p>24 Q. Did you get introduced to --</p> <p>25 A. I never met anyone on there, no.</p>	<p style="text-align: right;">Page 349</p> <p>1 about.</p> <p>2 Q. How about what -- seemygf.com?</p> <p>3 A. I don't recall.</p> <p>4 Q. How about OkCupid?</p> <p>5 A. Yes.</p> <p>6 Q. What's that?</p> <p>7 A. It's a dating site, similar to</p> <p>8 match.com.</p> <p>9 Q. Did you use that?</p> <p>10 A. I signed up for it, yes.</p> <p>11 Q. Karen Karpusias (ph), who is she?</p> <p>12 A. I have no idea.</p> <p>13 Q. Why were you looking for real estate</p> <p>14 in Little Rock, Arkansas?</p> <p>15 A. I don't recall looking for Little</p> <p>16 Rock, Arkansas real estate.</p> <p>17 Q. Okay. What's AdultFriendFinder.com?</p> <p>18 A. It's a website.</p> <p>19 Q. And did you register with Adult</p> <p>20 Friend Finder as well?</p> <p>21 A. Possibly.</p> <p>22 Q. And you'd get e-mails to your Boston</p> <p>23 Scientific e-mail account from --</p> <p>24 A. It was the only e-mail I had.</p> <p>25 Q. What's that?</p>

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<p style="text-align: right;">Page 358</p> <p>1 Lacia but not the exact reason why I was terminated.</p> <p>2 Q. Actually, we looked at e-mails</p> <p>3 earlier where you were telling her, I'm going to be</p> <p>4 fired for the DWI. Right?</p> <p>5 A. Well, I was making an assumption</p> <p>6 because I was concerned about it.</p> <p>7 Q. And you had e-mails back and forth</p> <p>8 where you were critical of her spreading that around</p> <p>9 to others on the softball fields, with the other</p> <p>10 parents and things like that. Right?</p> <p>11 A. Yeah. I think I'm critical of</p> <p>12 everything that Lacia does that's a negative towards</p> <p>13 me.</p> <p>14 Q. But she -- you actually believe she</p> <p>15 was spreading that. Right?</p> <p>16 A. Well, quite frankly, yes. I know for</p> <p>17 a fact that she was talking to people, and I don't</p> <p>18 think there was any reason to reveal my personal</p> <p>19 business to neighborhood people at a softball field.</p> <p>20 Q. Any of those people work in the</p> <p>21 industry?</p> <p>22 A. No, not that I know of, but they're</p> <p>23 softball coaches and they're neighbors. But not</p> <p>24 that I know of that work in the industry.</p> <p>25 Q. So you have a disability</p>	<p style="text-align: right;">Page 360</p> <p>1 Q. And why do you think it's because you</p> <p>2 were an alcoholic versus because you engaged in the</p> <p>3 behaviors that you did?</p> <p>4 A. Because I firmly believe that I</p> <p>5 engaged in the behaviors I did because I, you know,</p> <p>6 developed a drinking problem. And frankly, I feel</p> <p>7 like I didn't acknowledge it or didn't recognize it</p> <p>8 at the time, that I finally did stand up and raise</p> <p>9 my hand and say, I need some help. And I did that</p> <p>10 as soon as I felt like things had gotten to the</p> <p>11 point where I was ready to get help.</p> <p>12 MR. KNAPP: I'm not -- can you read</p> <p>13 back the question, please.</p> <p>14 - - -</p> <p>15 (The court reporter read the</p> <p>16 pertinent part of the record.)</p> <p>17 - - -</p> <p>18 THE WITNESS: Because I don't think</p> <p>19 some of those behaviors would have happened if I was</p> <p>20 not an alcoholic and didn't have control of my</p> <p>21 drinking.</p> <p>22 BY MR. KNAPP:</p> <p>23 Q. So do you think its disability</p> <p>24 discrimination to fire somebody because they engage</p> <p>25 in a terminable offense due to alcoholism?</p>
<p style="text-align: right;">Page 359</p> <p>1 discrimination claim in this case. Right?</p> <p>2 A. Correct.</p> <p>3 Q. And you are claiming that you were</p> <p>4 fired because of your alcoholism?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. And why do you believe you</p> <p>7 were fired for your alcoholism versus any of the</p> <p>8 other things that we've talked about today?</p> <p>9 MR. MARTIN: I object. First of all,</p> <p>10 it's a legal conclusion you're asking from him. But</p> <p>11 to the best of his abilities that he can answer the</p> <p>12 question from facts that he knows as opposed to</p> <p>13 facts we discovered during the case, you can do</p> <p>14 that.</p> <p>15 THE WITNESS: So the facts that I</p> <p>16 know is Sam had concerns and voiced them in two</p> <p>17 corrective actions about my drinking. And I had</p> <p>18 stepped forward and spoken to Camille Chang Gilmore</p> <p>19 stating that I had a drinking problem and I did</p> <p>20 suffer from the disease of alcoholism. I entered a</p> <p>21 treatment center for 30 days. And when I came back,</p> <p>22 I was subsequently fired. I believe that's one of</p> <p>23 the reasons that they effectively said that they</p> <p>24 were terminating me.</p> <p>25 BY MR. KNAPP:</p>	<p style="text-align: right;">Page 361</p> <p>1 A. I think once a person raises his hand</p> <p>2 and says, I want to do everything possible to get</p> <p>3 help, that the company, especially after 15 years of</p> <p>4 successful service, should stand behind them and not</p> <p>5 penalize me because I didn't raise it early enough</p> <p>6 for them, but at least stand behind me and support</p> <p>7 me, saying I did raise my hand and say I want help</p> <p>8 and not fire me days after I returned from</p> <p>9 treatment.</p> <p>10 Q. Would it have been better if they</p> <p>11 fired you before you went out on treatment?</p> <p>12 A. No. It would have better is if --</p> <p>13 no, it wouldn't have.</p> <p>14 Q. Okay. So your basis -- and I</p> <p>15 appreciate counsel's point that there might be other</p> <p>16 things that he'll think of, but your basis, the</p> <p>17 facts that you base it on, are the facts that you</p> <p>18 were fired for behavior that's directly linked to</p> <p>19 your alcoholism, and you were fired after you told</p> <p>20 people you were an alcoholic and needed treatment?</p> <p>21 A. Well, I believe it's much deeper than</p> <p>22 that. I think there was a retaliation against me.</p> <p>23 Q. I'm asking about disability</p> <p>24 discrimination.</p> <p>25 MR. MARTIN: He's answering the</p>

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<p style="text-align: right;">Page 362</p> <p>1 question. He's answering the question. Go ahead.</p> <p>2 THE WITNESS: So I believe that there</p> <p>3 was more to it than that. I think there was</p> <p>4 retaliation from Gary and plotted by Sam. I think</p> <p>5 that was evident in conversations I had with Lynn</p> <p>6 Prust, that they're making -- they're making false</p> <p>7 accusations against me. So I think there was a plot</p> <p>8 not to investigate incidents that happened but to</p> <p>9 investigate Mike Simons as a whole.</p> <p>10 BY MR. KNAPP:</p> <p>11 Q. Including the Jeannette Bankes issue.</p> <p>12 Right?</p> <p>13 A. You know, after she had asked me the</p> <p>14 questions about Jeannette Bankes and I answered them</p> <p>15 honestly, I never heard follow-up on that and didn't</p> <p>16 see it in any notes of why I was fired that that was</p> <p>17 an issue.</p> <p>18 Q. You believe that was retaliation by</p> <p>19 Gary and Sam?</p> <p>20 A. I don't know if that was retaliation</p> <p>21 or not.</p> <p>22 Q. You believed at the time it was?</p> <p>23 A. I believed, because that was the</p> <p>24 first time I had ever gotten written up for</p> <p>25 anything, and it seemed that the time frame of after</p>	<p style="text-align: right;">Page 364</p> <p>1 reason?</p> <p>2 MR. MARTIN: Give the same objection</p> <p>3 I gave earlier to the same question that he</p> <p>4 partially answered, but you can go ahead.</p> <p>5 THE WITNESS: First of all, I don't</p> <p>6 know all the statutes about disability, firing, just</p> <p>7 speaking from a layman's term. I feel like the two</p> <p>8 corrective actions that I received were exaggerated,</p> <p>9 whether it's in phraseology or extent of the</p> <p>10 problem. I feel like I raised my hand and said, I</p> <p>11 have the disease of alcoholism and I want to go get</p> <p>12 help. And I had never heard about this February</p> <p>13 27th incident, even though they had several weeks to</p> <p>14 address this, whether that day, the next day or two</p> <p>15 weeks post. I feel like there was nothing sticking</p> <p>16 from compliance, so they pulled this out of the mix,</p> <p>17 and I was fired for essentially a drinking offense</p> <p>18 after I've acknowledged that I have a disease and</p> <p>19 went to get help.</p> <p>20 BY MR. KNAPP:</p> <p>21 Q. So other than your -- the perceived</p> <p>22 unfairness of the criticism, why do you believe</p> <p>23 they were -- what facts do you have to suggest that</p> <p>24 they were motivated by your having alcoholism?</p> <p>25 A. So I was motivated -- they were</p>
<p style="text-align: right;">Page 363</p> <p>1 Gary and I had gotten into the argument and I had</p> <p>2 turned him in that Sam and Gary -- you know, that</p> <p>3 these claims started coming from Lynn Prust.</p> <p>4 Q. So I understand you're claiming that</p> <p>5 Gary and Sam retaliated against you because you</p> <p>6 reported Gary, I think.</p> <p>7 Is that one of the things you're</p> <p>8 claiming?</p> <p>9 A. That's correct.</p> <p>10 Q. Okay. Are you claiming they</p> <p>11 retaliated against you because you're an alcoholic</p> <p>12 in reporting things to HR?</p> <p>13 A. No. I think using drinking was a</p> <p>14 vehicle for them to put their retaliation into</p> <p>15 effect.</p> <p>16 Q. What are the facts upon which you</p> <p>17 base your claim -- and we'll get to the retaliation</p> <p>18 for having complained about Gary later. But right</p> <p>19 now I'm talking about your disability discrimination</p> <p>20 claim, that you were fired because you're an</p> <p>21 alcoholic.</p> <p>22 A. Yes.</p> <p>23 Q. What facts are you aware of to</p> <p>24 suggest that Gary and Sam were motivated to fire you</p> <p>25 because of your alcoholism as opposed to some other</p>	<p style="text-align: right;">Page 365</p> <p>1 motivated by the fact of me having alcoholism,</p> <p>2 because clearly they continued down that path of</p> <p>3 false accusations of drinking and inappropriate</p> <p>4 behavior for a leader. So I think that's</p> <p>5 discriminating against someone who has alcoholism,</p> <p>6 who's raising their hand to say, can you understand</p> <p>7 why some of these behaviors were displayed.</p> <p>8 Q. They didn't even know you were an</p> <p>9 alcoholic until you told them in March?</p> <p>10 A. That's not true. Sam Conaway had</p> <p>11 asked me back in June, do you have a drinking</p> <p>12 problem.</p> <p>13 Q. And what did you tell him?</p> <p>14 A. I told him I didn't feel I had one at</p> <p>15 that point.</p> <p>16 Q. All right.</p> <p>17 A. And he had offered to get me help.</p> <p>18 So at that point I feel like because I didn't go on</p> <p>19 Sam's time frame, that when I finally felt ready to</p> <p>20 go get help, that he said, well, too late. I've</p> <p>21 already asked you if you wanted help almost a year</p> <p>22 ago and you said no, so now you're done was my</p> <p>23 feeling about Sam's thought.</p> <p>24 Q. Okay. Did anybody ever say anything</p> <p>25 to you to suggest they were motivated by alcohol</p>

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<p style="text-align: right;">Page 366</p> <p>1 discrimination -- you know, discrimination against 2 you because you had alcoholism?</p> <p>3 A. I recently found out after reviewing 4 some documents in my attorney's office that Sam 5 called me the company drunk on March 10th prior to 6 me going out for alcoholism. And I think that's a 7 derogatory term from someone who steps up and says 8 they're a recovering alcoholic.</p> <p>9 Q. You hadn't stepped up on March 10th, 10 had you?</p> <p>11 A. No, not yet, I hadn't stepped up; but 12 calling an employee a drunk to a compliance person I 13 think would show that you have a bias against people 14 who may or may not have a drinking problem, which 15 Sam already had asked me.</p> <p>16 Q. Did you -- and you deny you were a 17 drunk at that point. Right?</p> <p>18 A. I didn't deny anything. He didn't 19 say it to me. He said it to a compliance officer.</p> <p>20 Q. Are you denying here today that you 21 were not a drunk at that point in time?</p> <p>22 A. I'm not denying that I was and I had 23 a problem.</p> <p>24 Q. Okay. Did he -- what exactly is 25 written in that document you're referring to?</p>	<p style="text-align: right;">Page 368</p> <p>1 field rides that he believed other people were 2 alcoholics, in reference to Scott Heuler.</p> <p>3 Q. Okay.</p> <p>4 A. And he said it to me in a negative 5 connotation. Not he's an alcoholic, you know, we 6 want him to get better, it's I think he's an 7 alcoholic, he smells and looks like he's drunk in 8 the morning after a sales meeting. So it was my 9 feeling that Sam had a bias or negative -- negative 10 opinion of the disease of alcohol.</p> <p>11 Q. Did you ever make comments like that 12 about anybody at Boston Scientific?</p> <p>13 A. I did not make comments like that.</p> <p>14 Q. Never? Okay.</p> <p>15 Did -- is Scott still employed?</p> <p>16 A. Scott is still employed.</p> <p>17 Q. What is his position?</p> <p>18 A. He's area VP of the Southeast.</p> <p>19 Q. To whom does he report?</p> <p>20 A. Sam Conaway.</p> <p>21 Q. Sam hasn't fired him?</p> <p>22 A. I think they made a good friendship 23 from what I can view.</p> <p>24 Q. Despite Sam's perception that he's an 25 alcoholic?</p>
<p style="text-align: right;">Page 367</p> <p>1 A. I didn't actually read the document. 2 It was something that we discussed but --</p> <p>3 MR. MARTIN: Don't talk about your 4 discussions with --</p> <p>5 BY MR. KNAPP:</p> <p>6 Q. You didn't read anything that said 7 that; somebody told you that was in a document?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. So you don't know if that's 10 true or not?</p> <p>11 A. I trust the person that told me.</p> <p>12 Q. Okay. And that was your counsel?</p> <p>13 MR. MARTIN: Objection. Don't 14 answer.</p> <p>15 MR. KNAPP: I think he has to, but.. 16 We'll mark that.</p> <p>17 BY MR. KNAPP:</p> <p>18 Q. So other than that, your reference to 19 this document you didn't read, any facts upon 20 which -- excuse me.</p> <p>21 Is there anything that you heard 22 anybody say that makes you believe they were 23 motivated to fire you because of a disability?</p> <p>24 A. I believe that Sam has a bias against 25 alcoholism. He's mentioned to me while he was doing</p>	<p style="text-align: right;">Page 369</p> <p>1 A. I don't know what changed Sam's 2 perception, you'll have to ask him that, but this is 3 something that Sam said to me early on before he and 4 Scott -- before he was Scott's boss.</p> <p>5 Q. Any other facts upon which you base 6 your disability discrimination claim?</p> <p>7 A. Not that I...</p> <p>8 Q. All right. Now we're going to turn 9 to -- you have a claim that you were retaliated 10 against for raising concerns internally. Right?</p> <p>11 A. Yes.</p> <p>12 Q. And just -- is that based upon you 13 coming forward in December to Gary and saying, I 14 think there's these issues?</p> <p>15 A. I believe so, yes.</p> <p>16 Q. And that's the e-mail that we talked 17 about earlier?</p> <p>18 A. Correct.</p> <p>19 Q. And your belief is that as a result 20 of doing that, Sam and Gary both were out to get 21 you?</p> <p>22 A. I believe that Sam and Gary are very 23 close friends, which would be a safe assumption, 24 knowing that Sam brought Gary over from Abbott 25 Corporation. And I believe the fact that Sam</p>

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<p style="text-align: right;">Page 370</p> <p>1 interjected himself into the harassment charge and</p> <p>2 essentially said there are no -- they're not</p> <p>3 breaking compliance rules here, that would show that</p> <p>4 Sam was affecting the outcome of that investigation.</p> <p>5 And the fact that Sam and Gary made similar but not</p> <p>6 exactly the same accusation against me that was</p> <p>7 proven to be nonfactual after the national sales</p> <p>8 meeting would show that yes, both Sam and Gary had</p> <p>9 interest in retaliating against me.</p> <p>10 I also feel like Gary Lickovitch</p> <p>11 speaking to customers and employees while I was in</p> <p>12 rehab is the direct result of retaliation.</p> <p>13 Q. And what did he say to customers?</p> <p>14 A. So a customer had addressed Pete Dunn</p> <p>15 and essentially said, I heard Mike Simons is in</p> <p>16 rehab and going to be fired when he gets back.</p> <p>17 Q. And what was that customer?</p> <p>18 A. Dmitriy Karpakoulous (ph). He's</p> <p>19 mentioned in another e-mail by Gary.</p> <p>20 Q. And where is he?</p> <p>21 A. He's at Columbia University. He used</p> <p>22 to work at Emory down in Atlanta near Gary and Sam.</p> <p>23 Q. So Pete called you to say Dmitriy</p> <p>24 told me that Gary told Dmitriy this?</p> <p>25 A. No. It's my understanding -- well,</p>	<p style="text-align: right;">Page 372</p> <p>1 these two reps of Steve Bromm's that you were out</p> <p>2 getting treatment. Right? You're claiming that he</p> <p>3 asked them questions?</p> <p>4 A. I don't know what he told them. I've</p> <p>5 still never found out exactly what they were told.</p> <p>6 I still don't know what they were told. I just knew</p> <p>7 that it warranted Steve Bromm calling HR that he</p> <p>8 felt uncomfortable enough with Gary's investigation.</p> <p>9 Q. So what's the basis for your thinking</p> <p>10 it's inappropriate?</p> <p>11 A. Steve Bromm calling HR that --</p> <p>12 Q. That's it?</p> <p>13 A. It raised to the level that Steve</p> <p>14 Bromm felt necessary to speak to human resources</p> <p>15 about it, so I found that to be inappropriate.</p> <p>16 Q. Okay. You don't know what Gary said</p> <p>17 to them?</p> <p>18 A. I don't know the exact details, no.</p> <p>19 Q. Do you know any details?</p> <p>20 A. No. No details further than I heard</p> <p>21 it was about me.</p> <p>22 Q. Okay. Any other customers to whom</p> <p>23 Gary spoke about you that you are aware of?</p> <p>24 A. Not that I'm aware of.</p> <p>25 Q. And any other employees that you</p>
<p style="text-align: right;">Page 371</p> <p>1 Pete and I spoke about it, but it's my understanding</p> <p>2 that Pete actually called HR as well.</p> <p>3 Q. Okay.</p> <p>4 A. Then I further found out that -- I</p> <p>5 didn't find out the nature of the conversations, but</p> <p>6 two of the reps that work for Steve Bromm were</p> <p>7 approached by Gary trying to find out information</p> <p>8 about me. Steve subsequently, after talking to his</p> <p>9 reps, called HR thinking it was inappropriate while</p> <p>10 I was in treatment that Gary was talking to reps</p> <p>11 about me, doing his own investigation. So Pete</p> <p>12 called HR but never told me what the nature of the</p> <p>13 conversation was, just that Gary was attempting to</p> <p>14 find out any information he could about me while I</p> <p>15 was away.</p> <p>16 Q. Why would it be inappropriate for</p> <p>17 your boss to look into inappropriate behavior on</p> <p>18 your part?</p> <p>19 A. It's my understanding that it's</p> <p>20 inappropriate for anyone to discuss why I went out</p> <p>21 on FMLA leave and other than HR once it's turned</p> <p>22 over to them to do their own investigation and be</p> <p>23 digging into a situation to try to find out any</p> <p>24 information that they could.</p> <p>25 Q. You're not claiming that Gary told</p>	<p style="text-align: right;">Page 373</p> <p>1 claim Gary spoke to while you were out on leave?</p> <p>2 A. He spoke to Ryan McKeefrey.</p> <p>3 Q. Okay.</p> <p>4 A. Essentially saying that he thought I</p> <p>5 was an ineffective manager, he was disappointed that</p> <p>6 I hadn't had discussions with Ryan about career</p> <p>7 development. And he believed -- I believe he said</p> <p>8 that Mike was isolating his team.</p> <p>9 Q. And why do you think that's</p> <p>10 inappropriate?</p> <p>11 A. Well, I think it's inappropriate,</p> <p>12 first of all, because it's not true. My team --</p> <p>13 I've never, ever made an attempt to isolate my team.</p> <p>14 In fact, most members of my team didn't want to</p> <p>15 interact with Gary Lickovitch in their accounts.</p> <p>16 Q. You told people on your team you</p> <p>17 thought Gary was incompetent. Right?</p> <p>18 A. I didn't specifically say that to</p> <p>19 them that I recall. I think I got feedback from</p> <p>20 them that Gary was not good in front of their</p> <p>21 customers, that he was woefully underqualified</p> <p>22 because of lack of product knowledge and lack of</p> <p>23 accounts and lack of customers.</p> <p>24 Q. So I'm trying to understand why it's</p> <p>25 okay for you to go around telling people at Boston</p>

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<p style="text-align: right;">Page 378</p> <p>1 taken an FMLA claim – FMLA leave?</p> <p>2 MR. MARTIN: Same objection I made</p> <p>3 before.</p> <p>4 You can answer if you know.</p> <p>5 THE WITNESS: I don't specifically</p> <p>6 know for taking an FMLA leave. I just know that it</p> <p>7 was very shortly after I got back from a FMLA leave.</p> <p>8 BY MR. KNAPP:</p> <p>9 Q. Other than the timing, are there any</p> <p>10 other facts upon which you base your claim that you</p> <p>11 were fired in retaliation for taking FMLA leave?</p> <p>12 A. I don't know any of that.</p> <p>13 Q. Did you believe that Sam or Gary had</p> <p>14 violated any law or regulation in their behavior?</p> <p>15 MR. MARTIN: At what point?</p> <p>16 MR. KNAPP: Let me be more precise.</p> <p>17 BY MR. KNAPP:</p> <p>18 Q. To the extent you reported bad</p> <p>19 behavior by Gary or Sam to either them or Lynn</p> <p>20 Prust, did you understand that you were reporting</p> <p>21 behavior that was unlawful or just inappropriate?</p> <p>22 A. I don't know the answer to that</p> <p>23 question. I don't know the laws on sexual</p> <p>24 harassment.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 380</p> <p>1 stuff I don't know but you might want to look into</p> <p>2 it?</p> <p>3 A. That's exactly right. I think these</p> <p>4 are things that I've heard that are troubling.</p> <p>5 Q. What things did you say --</p> <p>6 A. I've heard Sam Conaway has slept with</p> <p>7 subordinates. I'm not in the room with a camera, so</p> <p>8 I don't know if that's a fact or not.</p> <p>9 Q. Okay. Anything else?</p> <p>10 A. No.</p> <p>11 Q. Did you ever sleep with a</p> <p>12 subordinate?</p> <p>13 A. No.</p> <p>14 Q. How about a trainee that you were</p> <p>15 responsible for training?</p> <p>16 A. No.</p> <p>17 Q. So other than I think he's -- there's</p> <p>18 rumors he might have slept with subordinates and he</p> <p>19 asked me for the phone numbers for females when he's</p> <p>20 married, anything else?</p> <p>21 A. No.</p> <p>22 Q. Why is asking you for female numbers</p> <p>23 sexual harassment?</p> <p>24 A. I didn't say that was sexual</p> <p>25 harassment by him. I said it was inappropriate</p>
<p style="text-align: right;">Page 379</p> <p>1 A. I believe that I was reporting</p> <p>2 inappropriate behavior, but I don't know the laws.</p> <p>3 Q. Okay. And to the extent you're</p> <p>4 reporting any unlawful behavior would be sexual</p> <p>5 harassment, is that what you're saying?</p> <p>6 A. So yeah, I reported sexual harassment</p> <p>7 or inappropriate behavior.</p> <p>8 Q. And what specifically did you report</p> <p>9 as to Sam in your conversations with Lynn?</p> <p>10 A. So I reported Sam's inappropriateness</p> <p>11 to me about asking for females' numbers when he's</p> <p>12 married.</p> <p>13 Q. Because that would be --</p> <p>14 A. I thought that's a character flaw and</p> <p>15 basically out of bounds, to ask a subordinate to be</p> <p>16 in that position.</p> <p>17 Q. Had you ever done that?</p> <p>18 A. No.</p> <p>19 Q. Okay. What else?</p> <p>20 A. That was the crux of -- you know, and</p> <p>21 then the rest of it was kind of rumors and innuendos</p> <p>22 that I had posed to Lynn to see if she was willing</p> <p>23 to investigate.</p> <p>24 Q. So you didn't report anything you</p> <p>25 knew of; you just said there might be some other</p>	<p style="text-align: right;">Page 381</p> <p>1 behavior.</p> <p>2 Q. Okay. But you're not claiming that's</p> <p>3 unlawful or constitutes sexual harassment?</p> <p>4 A. No, no.</p> <p>5 MR. KNAPP: Take a quick break. I</p> <p>6 think I'm done.</p> <p>7 THE VIDEOGRAPHER: The time is 5:00</p> <p>8 p.m. We are off the record.</p> <p>9 - - -</p> <p>10 (A recess was taken from 5:00 p.m.</p> <p>11 to 5:09 p.m.)</p> <p>12 - - -</p> <p>13 THE VIDEOGRAPHER: The time is 5:09</p> <p>14 p.m. We are on the record.</p> <p>15 BY MR. KNAPP:</p> <p>16 Q. Mr. Simons, I appreciate that you</p> <p>17 believe that Gary and Sam made up this allegation</p> <p>18 about you making out with somebody at a national</p> <p>19 sales meeting. Right?</p> <p>20 A. Uh-huh.</p> <p>21 Q. But would you agree that if that</p> <p>22 claim was made to HR, to Lynn Prust, that Lynn and</p> <p>23 HR had an obligation to look into it?</p> <p>24 A. Yeah. I believe they would.</p> <p>25 Q. Okay. And they did. Right?</p>

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<p style="text-align: right;">Page 382</p> <p>1 A. Uh-huh.</p> <p>2 Q. And they concluded they couldn't find</p> <p>3 any corroborating evidence that that even occurred.</p> <p>4 Right?</p> <p>5 A. Correct.</p> <p>6 Q. So you were not disciplined for that.</p> <p>7 Right?</p> <p>8 A. No.</p> <p>9 Q. Okay. With respect to Jeannette</p> <p>10 Bankes, you weren't written up for that. Right?</p> <p>11 A. I was not disciplined at all for</p> <p>12 that.</p> <p>13 Q. Do you recall Lynn or Michele talking</p> <p>14 to you about probably shouldn't be kissing or</p> <p>15 touching women?</p> <p>16 A. I don't -- I don't recall having that</p> <p>17 conversation with them. And I would find that odd,</p> <p>18 because it's very common practice for people to kiss</p> <p>19 hello to someone that they were friendly with and</p> <p>20 felt comfortable with.</p> <p>21 Q. Okay. And you thought that was the</p> <p>22 case with Jeannette. Right?</p> <p>23 A. Uh-huh.</p> <p>24 Q. But it turns out it wasn't welcome.</p> <p>25 Right?</p>	<p style="text-align: right;">Page 384</p> <p>1 - - -</p> <p>2 BY MR. MARTIN:</p> <p>3 Q. This February 27, 2015 phone call --</p> <p>4 A. Uh-huh.</p> <p>5 Q. -- was Gary Conaway on that?</p> <p>6 A. Yes.</p> <p>7 Q. Excuse me, Sam Conaway?</p> <p>8 A. Sam Conaway, yes.</p> <p>9 Q. Was Gary Lickovitch on it?</p> <p>10 A. Yes.</p> <p>11 Q. Now, in your corrective action the</p> <p>12 prior year, there was an event that Gary discussed</p> <p>13 with you about excessive drinking. Right?</p> <p>14 A. Sam discussed it with me.</p> <p>15 Q. Sam. Okay. Keep my names right.</p> <p>16 The very next day Sam spoke to you</p> <p>17 about it, didn't he?</p> <p>18 A. He did. That's when I received it.</p> <p>19 Q. Did Sam speak to you the very next</p> <p>20 day or even before that about you drinking on the</p> <p>21 telephone call on February 27th?</p> <p>22 A. No.</p> <p>23 Q. Did Sam Conaway ever speak to you</p> <p>24 from February 27th to the day you left, on March</p> <p>25 13th, about him believing that you had ever had any</p>
<p style="text-align: right;">Page 383</p> <p>1 A. That's what you're telling me.</p> <p>2 Q. Okay.</p> <p>3 A. I never -- I never was disciplined</p> <p>4 for any of that.</p> <p>5 Q. And -- okay. And I'm not saying you</p> <p>6 were disciplined, but are you -- do you recall</p> <p>7 anybody talking to you about being careful about</p> <p>8 when you chose to engage in physical contact?</p> <p>9 A. I don't recall that conversation.</p> <p>10 Q. Okay. All right. So I'm trying to</p> <p>11 remember if there were any other allegations you</p> <p>12 claim Gary and Sam made to HR other than those two</p> <p>13 things?</p> <p>14 A. I don't recall what the conversations</p> <p>15 were with Michele DeCoux and Lynn Prust.</p> <p>16 Q. Regardless, it sounds like you</p> <p>17 weren't disciplined or even terminated, for that</p> <p>18 matter, for any alleged sexual harassment. Correct?</p> <p>19 A. Correct.</p> <p>20 MR. KNAPP: I have nothing further at</p> <p>21 this point.</p> <p>22 MR. MARTIN: Mike, I have just a few</p> <p>23 follow-up questions. I won't belabor it.</p> <p>24 - - -</p> <p>25 EXAMINATION</p>	<p style="text-align: right;">Page 385</p> <p>1 alcohol on that telephone conferences of February</p> <p>2 27th?</p> <p>3 A. No.</p> <p>4 Q. Gary was on the call as well.</p> <p>5 Correct?</p> <p>6 A. Correct.</p> <p>7 Q. Did Gary speak to you at any time</p> <p>8 after the call about him believing that you were</p> <p>9 drinking on -- prior to or during that telephone</p> <p>10 call on the 27th of February?</p> <p>11 A. No.</p> <p>12 Q. The first time you learned about that</p> <p>13 was -- that that was an issue with the company was</p> <p>14 after you returned from your leave of absence.</p> <p>15 Correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Do those facts something you consider</p> <p>18 part of your disability discrimination case?</p> <p>19 MR. KNAPP: Objection, leading.</p> <p>20 BY MR. MARTIN:</p> <p>21 Q. You can answer.</p> <p>22 A. Yes.</p> <p>23 Q. You were asked about this. I'm going</p> <p>24 to mark this whatever our next exhibit is. I'll</p> <p>25 have to get copies before we go. It's my only copy.</p>

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<p style="text-align: right;">Page 386</p> <p>1 Just for the record, it's been Bates stamped BSC 2 795, 796 and 797. 3 MR. KNAPP: What's the date of that? 4 Sorry. 5 MR. MARTIN: 3/10/2015. For the 6 record, it appears to be Lynn Prust's notes -- I 7 think we're going on that assumption during the 8 deposition -- regarding a scheduled call with Sam 9 Conaway. 10 --- 11 (Deposition Exhibit No. Simons-46, 12 Handwritten notes dated 3-10-15, Bates 13 stamped BSC00000795 through BSC00000797, 14 was marked for identification.) 15 --- 16 BY MR. MARTIN: 17 Q. You had testified earlier that you 18 had seen some notes from Lynn Prust before your 19 deposition? 20 A. Yes. 21 Q. Let me show you the last page, see if 22 this refreshes your memory. 23 Do you recall ever seeing this before 24 the deposition, the third page of that document? 25 A. I don't think I actually read that.</p>	<p style="text-align: right;">Page 388</p> <p>1 Q. Is that one of the things that you 2 believe supports your disability claim? 3 A. Yes. 4 Q. Let me show you what's been marked 5 Simons-47 for identification. Again, it's 6 information provided by the defendants in discovery, 7 and it's actually Bates stamped BSC 1066. 8 Can you take a look at that for me. 9 A. Yes. 10 Q. What's depicted there? 11 A. This is my -- 12 Q. Well, first, it's an e-mail. Right? 13 A. It's my e-mail to Camille Chang 14 Gilmore. It's from Camille Chang Gilmore basically 15 relaying what I told her on a call. 16 Q. Now, you did speak to Camille on 17 March 13, 2015. Am I correct? 18 A. Yes. 19 Q. And that's the date of this e-mail. 20 Correct? 21 A. Yes. 22 Q. Who is this e-mail -- it's written by 23 Camille. Correct? 24 A. Yes. 25 Q. Who is it addressed to?</p>
<p style="text-align: right;">Page 387</p> <p>1 Q. Okay. You don't have any 2 recollection of reading that? 3 A. No. 4 --- 5 (Deposition Exhibit No. Simons-47, 6 E-mail chain, top one dated 3/13/2015, 7 Bates stamped BSC00001066, was marked for 8 identification.) 9 --- 10 BY MR. MARTIN: 11 Q. Just for the record, Simons-46 is a 12 March 10, 2015 handwritten notes from Ms. Prust. 13 Scheduled called with Sam Conaway. 14 Did I read that right? 15 A. Uh-huh. 16 Q. Is that a yes? 17 A. Yes. 18 Q. On the third page, and I'll quote it 19 for the record and you can tell me if I'm wrong. 20 Quote, "People know him as the drunk. 21 He thinks he has great relationships. His self 22 awareness is not there." 23 Apparently Ms. Prust is attributing 24 that comment to Sam; is that right? 25 A. Correct.</p>	<p style="text-align: right;">Page 389</p> <p>1 A. To Gary Lickovitch and Michele 2 DeCoux. 3 Q. Is it copied to Sam as well? 4 A. It's also copied to Sam. 5 Q. Now, did you speak to her that day? 6 A. I did. 7 Q. Did you report to her that you 8 suffered -- that you were an alcoholic? 9 A. I did state that. 10 Q. Did you tell her that you wanted 11 treatment? 12 A. I did. 13 Q. And did you tell her that you wanted 14 to undergo FMLA leave? 15 A. I did. 16 Q. Did she offer to send you the 17 information from the ESP, which is the employee 18 assistance plan? 19 A. Yeah. 20 Q. EAP. 21 A. EAP. 22 Q. That deals with -- what is the EAP? 23 A. I think the EAP covers several 24 things, but under that falls alcohol abuse and 25 treatment for that.</p>

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<p style="text-align: right;">Page 390</p> <p>1 Q. So she's offering to give you</p> <p>2 information about the company-sponsored plan for</p> <p>3 assisting its employees who have alcoholism?</p> <p>4 MR. KNAPP: Objection, leading, lack</p> <p>5 of foundation.</p> <p>6 BY MR. MARTIN:</p> <p>7 Q. Is that what she's offering?</p> <p>8 A. Yes.</p> <p>9 Q. Now, did you authorize her to tell</p> <p>10 Gary Lickovitch that you admitted to being an</p> <p>11 alcoholic?</p> <p>12 A. No.</p> <p>13 Q. Did you authorize her to tell Sam</p> <p>14 that you were an alcoholic?</p> <p>15 A. No.</p> <p>16 Q. Is this the first time when you</p> <p>17 reviewed this e-mail that it was -- that you learned</p> <p>18 that she revealed that to Sam and Gary?</p> <p>19 A. Yes.</p> <p>20 Q. And this e-mail is dated the 13th of</p> <p>21 March. Right?</p> <p>22 A. Correct.</p> <p>23 Q. And after that -- well, first of all,</p> <p>24 do you believe this is information that supports</p> <p>25 your disability claim?</p>	<p style="text-align: right;">Page 392</p> <p>1 A. So it was reported to me that Gary</p> <p>2 had been speaking to several clinicals on Steve</p> <p>3 Bromm's team, asking for information about alcohol</p> <p>4 abuse, you know, with -- with those reps. It was</p> <p>5 also reported to me from Pete Dunn that Gary had</p> <p>6 spoken with a physician about me going into</p> <p>7 treatment as well as potentially being fired. And</p> <p>8 then it was reported to me that he had been making</p> <p>9 disparaging comments about my leadership ability to</p> <p>10 other members of my team.</p> <p>11 Q. Are these additional facts that you</p> <p>12 believe support your disability claim?</p> <p>13 A. Yes.</p> <p>14 MR. MARTIN: I have nothing further.</p> <p>15 - - -</p> <p>16 EXAMINATION</p> <p>17 - - -</p> <p>18 BY MR. KNAPP:</p> <p>19 Q. So turning back to page --</p> <p>20 Exhibit 46, the -- is this the document that you</p> <p>21 were referring to earlier where you said Sam Conaway</p> <p>22 referred to you as the company drunk?</p> <p>23 A. Yes.</p> <p>24 Q. It doesn't say that, though. Right?</p> <p>25 A. "People know him as the drunk."</p>
<p style="text-align: right;">Page 391</p> <p>1 A. Yes.</p> <p>2 Q. After that -- you discussed on the</p> <p>3 retaliation issue some of the conduct that Gary took</p> <p>4 after you went out on leave. Correct?</p> <p>5 A. Correct.</p> <p>6 Q. Again, this is leave for your</p> <p>7 alcoholism inpatient treatment for 30 days?</p> <p>8 A. Correct.</p> <p>9 Q. Did Gary do to your -- what was</p> <p>10 reported to you by your colleagues, did Gary do any</p> <p>11 sort of investigation about your alcohol use?</p> <p>12 A. What was reported to me is that he</p> <p>13 did do an investigation, trying to find out</p> <p>14 information about me and alcohol use.</p> <p>15 MR. KNAPP: Objection. That's</p> <p>16 totally contradictory to what he said earlier, and</p> <p>17 it's a leading question.</p> <p>18 MR. MARTIN: I don't think it is. I</p> <p>19 think it's consistent.</p> <p>20 BY MR. MARTIN:</p> <p>21 Q. What was reported to you?</p> <p>22 MR. KNAPP: Objection, asked and</p> <p>23 answered.</p> <p>24 BY MR. MARTIN:</p> <p>25 Q. You can answer.</p>	<p style="text-align: right;">Page 393</p> <p>1 Q. Okay. Not even Sam thinks you're a</p> <p>2 drunk but that people know you as the drunk. Right?</p> <p>3 A. That's what it says here.</p> <p>4 Q. Right. And do you think it's</p> <p>5 accurate that you didn't have very good</p> <p>6 self-awareness at this time?</p> <p>7 A. I think I gained self-awareness.</p> <p>8 This was after I had gone -- is this -- this is</p> <p>9 before I had gone to rehab. But I was gaining</p> <p>10 self-awareness at that point that I had an issue,</p> <p>11 and that's why I stepped up.</p> <p>12 Q. This is two days before you had your</p> <p>13 DWI. Right?</p> <p>14 A. Yeah. Clearly I knew that there was</p> <p>15 an issue two days before I had a DWI.</p> <p>16 Q. But not enough of an issue to go and</p> <p>17 seek treatment?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Do you think people did think</p> <p>20 of you as a drunk?</p> <p>21 A. I certainly wouldn't know what people</p> <p>22 think. And I had a good sampling of people who</p> <p>23 would not think that way.</p> <p>24 Q. Now, this March 10, 2015 document</p> <p>25 refers to last Friday, the 27th people were texting</p>